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Supreme Court of the United States

OCTOBER TERM, 1962

No. 142

**SCHOOL DISTRICT OF ABINGTON TOWNSHIP,
PENNSYLVANIA, ET AL., APPELLANTS,**

vs.

EDWARD LEWIS SCHEMPP, ET AL.

**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

FILED MAY 24, 1963

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SUPREME COURT OF THE UNITED STATES

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[fol. 1]

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Civil Action No. 24119

EDWARD LEWIS SCHEMP, SIDNEY GERBER SCHEMP, individually and as parents and natural guardians of ELLORY FRANK SCHEMP, ROGER WADE SCHEMP, DONNA KAY SCHEMP, 2459 Susquehanna Avenue, Roslyn, Montgomery County, Pennsylvania

VS.

SCHOOL DISTRICT OF ABINGTON TOWNSHIP, PENNSYLVANIA, c/o JAMES F. KOEHLER, 739 Wyndale Avenue, Abington Township, Montgomery County, Pennsylvania; O. H. ENGLISH, 4308 Highland Avenue, Abington Township, Montgomery County, Pennsylvania; EUGENE STULL, 1449 Abington Avenue, Glenside, Montgomery County, Pennsylvania; M. EDWARD NORTHAM, 373 Roberts Avenue, Glenside, Pennsylvania

COMPLAINT—Filed February 14, 1958

1. These causes of action are brought by the plaintiffs to redress the deprivation, under color of Pennsylvania law, regulation, custom and usage of certain rights, privileges and immunities secured by the Constitution of the United States, as hereinafter more fully set forth and jurisdiction is therefore conferred upon this court under 28 United States Code, Section 1343.

[fol. 2] 2. All of the defendants reside within the Eastern District of Pennsylvania, and venue lies therein by virtue of 28 United States Code, Section 1391.

3. Ellory Frank Schemp, Roger Wade Schemp and Donna Kay Schemp are the minor children of Edward Lewis Schemp and Sidney Gerber Schemp, residing with them at 2459 Susquehanna Avenue, Roslyn, Montgomery County, Pennsylvania.

4. Defendant, O. H. English, resides at 1308 Highland Avenue, Abington Township, Montgomery County, Pennsylvania, and is the Superintendent of Abington Township Schools.

5. The School District of Abington Township is a body corporate, and this action is being brought against it in its corporate capacity under Section 213 of the Act of March 10, 1949, P. L. 30 (24 P. S. §2-213).

6. All of the plaintiffs are of the Unitarian faith, and are members of the Unitarian Church of Germantown, Philadelphia, Pennsylvania.

First Count

7. Defendant, Eugene Stull, resides at 1449 Abington Avenue, Glenside, Montgomery County, Pennsylvania, and is the principal of the Abington Senior High School, which is located in Abington Township, Montgomery County, Pennsylvania.

8. Ellory Frank Schempp is a senior student at the Abington Senior High School.

9. In the Abington Senior High School, at the start of each school day, there is a devotional period consisting of the following:

[fol. 3] a. Ten verses of the King James Version of the Holy Bible, either the Old or the New Testament thereof, are read by a student over a public address system which is broadcasted into all of the classrooms, including the one in which Ellory Frank Schempp is a student.

b. Immediately thereafter, the students in the entire school, including Ellory Frank Schempp, are directed over the said public address system, to rise and to say the Lord's Prayer.

10. The aforesaid practices were instituted by the defendants in the Abington Senior High School in the manner stated in September, 1956, and continue to the present time.

11. The aforesaid practice of reading ten verses of the Holy Bible is in effect in Pennsylvania Public Schools pur-

suant to Section 1516 of the Act of March 10, 1949, P. L. 30, as amended by Section 7 of the Act of May 9, 1949, P. L. 939 (24 P. S. 15-1516) which provides that:

"At least ten verses from the Holy Bible shall be read, or caused to be read, without comment, at the opening of each public school on each school day, by the teacher in charge. Provided, That where any teacher has other teachers under and subject to direction, then the teacher exercising such authority shall read the Holy Bible, or cause it to be read, as herein directed. . . ."

12. The defendants have violated and continue to violate the religious conscience and liberties of Ellory Frank Schempp by their enforcement of the statutory requirement of reading the bible in his classroom, and by directing that students say the Lord's Prayer.

[fol. 4] 13. Defendant; School District of Abington Township has authorized the expenditure of funds for the purchase of Holy Bibles in order to carry out the Pennsylvania statutory requirement as hereinbefore set forth.

14. The Pennsylvania statute, Section 1516 of the Public Law 30, Act of March 10, 1949, P. L. 30, as amended, and the practices hereinbefore set forth are unconstitutional as being in conflict with the 14th Amendment to the United States Constitution.

Wherefore, Edward Lewis Schempp and Sidney Gerber Schempp, as parents and natural guardians of Ellory Frank Schempp, pray this Court preliminarily, and after trial of this suit, permanently, to enjoin the enforcement, operation and execution of Section 1516 of the Act of March 10, 1949; P. L. 30, as amended, to declare said act unconstitutional; to declare unconstitutional the practices of causing the Holy Bible to be read and of directing the saying of the Lord's Prayer in the Abington Township Senior High School, and to enjoin and declare unconstitutional the expenditure of funds for the purchase of Holy Bibles.

Second Count

15. Defendant, M. Edward Northam, resides at 373 Roberts Avenue, Glenside, Montgomery County, Pennsylvania, and is the principal of the Huntingdon Junior High

School, which is located in Abington Township, Montgomery County, Pennsylvania.

16. Roger Wade Schempp is an eighth grade student at the Huntingdon Junior High School.

[fol. 5] 17. In the Huntingdon Junior High School, at the start of each school day, and at the direction of the defendants, there is a devotional period consisting of the following:

a. Ten verses of the King James version of the Holy Bible, either the Old or New Testament thereof, are read or caused to be read by the teacher in charge of the classroom in which Roger Wade Schempp is a student.

b. Immediately thereafter, the students in said classroom are directed to rise and to say the Lord's Prayer.

18. Paragraph 11 is incorporated herein by reference thereto as though set forth in full.

19. The defendants have violated and continue to violate the religious conscience and liberties of Roger Wade Schempp by their enforcement of the said statute requiring the reading of the Bible in his classroom, and by directing that students say the Lord's Prayer.

20. Paragraphs 13 and 14 are incorporated herein by reference thereto as though set forth in full.

Wherefore, Roger Wade Schempp, through his parents and natural guardians, Edward Lewis Schempp and Sidney Gerber Schempp, pray this court preliminarily, and after trial of this suit permanently, to enjoin the enforcement, operation and execution of Section 1516 of the Act of March 10, 1949; P. L. 30, as amended, to declare said act unconstitutional; to declare unconstitutional the practices of causing the Holy Bible to be read and of directing the saying of the Lord's Prayer at the Huntingdon Junior High School; [fol. 6] and to enjoin and declare unconstitutional the expenditure of funds for the purchase of Holy Bibles.

Third Count

21. Donna Kay Schempp is a seventh grade student at the Huntingdon Junior High School.

22. Paragraphs 11, 15, 17 and 20 are incorporated herein by reference thereto as though set forth in full.

23. The defendants have violated and continue to violate the religious conscience and liberties of Donna Kay Schempp by their enforcement of the said statute requiring the reading of the Bible in her classroom and by directing that students say the Lord's Prayer.

Wherefore, Donna Kay Schempp, through her parents and natural guardians, Edward Lewis Schempp and Sidney Gerber Schempp, pray this court preliminarily, and after trial of this suit permanently, to enjoin the enforcement, operation and execution of Section 1516 of the Act of March 10, 1949; P. L. 30, as amended, to declare said act unconstitutional; to declare unconstitutional the practices of causing the Holy Bible to be read and of directing the saying of the Lord's Prayer at the Huntingdon Junior High School; and to enjoin and declare unconstitutional the expenditure of funds for the purchase of Holy Bibles.

Fourth Count

24. The First, Second and Third Counts are incorporated herein by reference thereto as though set forth in full.

[fol. 7] 25. Edward Lewis Schempp and Sidney Gerber Schempp aver that the aforesaid practices and devotional pattern interfere with their right to give their children a religious education of their own choosing and according to their own beliefs; and that certain beliefs are fostered by such practices which are contradictory to what they have taught and intend to teach their children.

Wherefore, plaintiffs pray this Court preliminarily, and after trial of this suit permanently, to enjoin the enforcement, operation, and execution of Section 1516 of the Act of March 10, 1949, P. L. 30, as amended, to declare said act unconstitutional; to declare as unconstitutional the practice of causing the Holy Bible to be read and of directing the

saying of the Lord's Prayer at the Abington Township Senior High School and Huntingdon Junior High School, and to enjoin and declare unconstitutional the expenditure of funds for the purchase of Holy Bibles.

Henry W. Sawyer, III, Wayland H. Elsbree, Attorneys for Plaintiffs.

[fol. 8]

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

ANSWER—Filed: April 25, 1958

And Now comes School District of Abington Township, Pennsylvania, c/o James F. Koehler, O. H. English, Eugene Stull and M. Edward Northam, defendants above named by their attorney and make answer to the Complaint as follows: stating that wherever in this Answer the defendants allege that they do not know the truth or falsity of an allegation of the plaintiffs or where an allegation is denied for lack of sufficient information, it is the intent and meaning of the defendants that the averment of such lack of knowledge or information shall have the meaning that the defendants are without knowledge or information sufficient to form a belief as to the truth of the corresponding averment of the Complaint.

[fol. 9]

First Defense

1. Denied; except that defendants admit that the exercise of jurisdiction is within the discretion of this Court.
2. It is admitted that all of the defendants reside within the Eastern District of Pennsylvania.
3. Admitted.
4. Admitted.
5. Admitted.

6. Denied for lack of sufficient information.

7. Admitted.

8. Admitted.

9. Denied; except that defendants admit that in the Abington Senior High School prior to the commencement of classes ten verses of the King James Version of the Holy Bible, either the Old or the New Testament thereof, are read without comment by a student or a teacher over a public address system which is broadcast into all of the classrooms, including the one in which Ellory Frank Schempp is a student, and defendants further admit that immediately after such reading the students in the entire school, including Ellory Frank Schempp, rise and may, if they so desire, say the Lord's Prayer.

10. Denied; except that defendants admit that the practices set forth in paragraph 9 of this Answer were in operation by the defendants in the Abington Senior High School during September 1956 and continue to the present time.

11. Admitted.

[fol. 10] 12. Denied.

13. Denied; except that defendants admit that both the Abington Senior High School and the Huntingdon Junior High School possess, among the many books used by them for educational purposes, King James Versions of the Holy Bible, some of which may have been purchased with funds of the School District of Abington Township, the amounts paid for such Holy Bibles being negligible.

14. Denied.

15. Admitted.

16. Admitted.

17. Denied; except that defendants admit that in the Huntingdon Junior High School, prior to the commencement of classes each day, ten verses of the King James Version of the Holy Bible, either the Old or the New Testament thereof, are read without comment or caused to be

read without comment by the teacher in charge of the classroom in which Roger Wade Schempp is a student; and defendants further admit that immediately thereafter the students in said classroom rise, and may, if they so desire, say the Lord's Prayer.

18. Admitted.

19. Denied.

20. Defendants incorporate by reference paragraphs 13 and 14 of this Answer as though set forth in full.

21. Admitted.

{fol. 11} 22. Defendants incorporate by reference paragraphs 11, 15, 17 and 20 of this Answer as though set forth in full.

23. Denied.

24. Defendants incorporate by reference paragraphs 7 to 23 inclusive of this Answer as though set forth in full.

25. Denied.

Second Defense

The exercise of jurisdiction by this Court is within the discretion of this Court since the Supreme Court of the Commonwealth of Pennsylvania has neither interpreted nor determined the validity of Section 1516 of the Act of the Commonwealth of Pennsylvania of March 10, 1949, P.L. 30, as amended by Section 7 of the Act of May 9, 1949, P.L. 939 (24 PS § 15-1516), which is the statute that plaintiffs seek to enjoin and have declared unconstitutional.

Third Defense

The Complaint fails to state a claim against defendants upon which relief can be granted in that no violation of any rights, privileges or immunities secured by the Constitution of the United States or otherwise, is set forth.

Wherefore, defendants ask that the Complaint be dismissed at plaintiffs' cost.

C. Brewster Rhoads, Attorney for Defendants.

[fol. 12]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

Excerpts From Transcript of Trial—August 5, 1958

Philadelphia, Pa.

[fol. 13] - Before Hon. John Biggs, Jr., Chief Judge, Third Judicial District, Hon. C. William Kraft, Jr., District Court Judge, Hon. William H. Kirkpatrick, District Court Judge.

APPEARANCES

Present: Henry W. Sawyer, 3rd, Esq., and Wayland H. Elsbree, Esq., for the Plaintiffs.

C. Brewster Rhoads, Esq., Percival R. Rieder, Esq., Philip H. Ward, Esq., and Sidney L. Wickenhaver, Esq., for the Defendants.

Thomas D. McBride, Esq., Attorney General of the Commonwealth of Pennsylvania, Harry J. Rubin, Esq., and Lois G. Forer, Esq., Assistant Attorneys General, for the Commonwealth of Pennsylvania.

[fol. 20] Mr. Sawyer: I will call as my first witness Ellory Schempp.

ELLORY FRANK SCHEMP, having been duly sworn, was examined and testified as follows:

[fol. 21] Direct examination.

By Mr. Sawyer:

Q. Ellory, are you through your father one of the plaintiffs in this case?

A. Yes, I am.

Q. What is your age?

A. Eighteen.

Q. Did you attend the Roslyn Elementary School?

A. I did.

Q. Did you attend the Abington Junior High School?

A. Yes.

Q. And did you attend the Abington Senior High School?

A. Yes.

Q. And are you still a student at the Abington Senior High School?

A. I graduated last June.

Q. Now, up to the 10th grade, Ellory, was there Bible reading in your classroom?

A. Yes, there was.

Q. And—

Mr. Rhoads: If Your Honors please, may I register a formal objection to any further testimony from this particular witness on the ground that he has now graduated from the school and that, therefore, any issue regarding the constitutionality of the statute in question is, of course, [fol. 22] moot as to him.

Judge Biggs: Mr. Rhoads, the Court will reserve ruling on your motion and if we deem the evidence in total is irrelevant, or in part irrelevant, we will strike out the irrelevance.

Mr. Rhoads: Thank you, sir.

By Mr. Sawyer: *

Q. Now, Ellory, will you tell the time, the place and the manner of that reading of the Bible, and what Bible it was up to your time, up to the 10th grade that you were in school.

A. The teacher would usually at the beginning of the year give the Bible reading over to the students, such that it was read by the students in rotation.

Q. And who selected the verses to be read?

A. The children.

Q. And what Bible, if you know, was it that was read?

A. The King James version.

Q. Now, was there a change in that practice in the 11th and 12th grades?

A. There was inasmuch as that we had a new high school and a centralized P. A. system was installed, therefore, the Bible was read over this P. A. system.

Mr. Rhoads: Ellory, will you be good enough to talk a little more slowly, sir; it would help me a good deal.
[fol. 23] The Witness: O.K.

Mr. Rhoads: I sometimes don't quite get what you say.

Mr. Sawyer: Do you want that answer reread?

Mr. Rhoads: No, just slowly.

By Mr. Sawyer:

Q. By whom was the reading done over the P. A. system?

A. The P. A. system was run, shall we say, by a special class of the high school which was known as the Radio and Television Workshop. This was a regular school class and the members of this class—

Judge Biggs: Just a little bit more slowly, Ellory.

The Witness: —were responsible for reading the announcements and taking care of Bible reading, etc.

By Mr. Sawyer:

Q. Now, will you describe for us precisely what happened upon your arrival in school in the morning and where you went?

A. Late bell was at 8:15; we went to our home rooms and approximately 8:20 a few opening bars of music would be played in order to gain the students' attention and following that immediately a student would announce over the P. A. system that a certain verse of the Bible was to be [fol. 24] read. He would immediately proceed to read this verse and upon finishing he would say would the students please rise and repeat the Lord's Prayer.

By Judge Biggs:

Q. Did you say "home room"?

A. Home room is the name of it.

Q. That is you would each go to your respective classrooms, which were your home, so to speak, classrooms?

A. That's right.

Judge Biggs: Thank you.

By Judge Kraft:

Q. By "P.A." as you have used the term, I assume you mean public address system—

A. I do.

Q. —in which the announcements came over some loud speaker from a central source.

A. That's true.

By Mr. Sawyer:

Q. Now, what is this exercise known as?

A. Morning devotions.

Q. And during the reading of the Bible what was the demeanor required of the students by the teacher in the home room?

Mr. Rhoads: That is objected to, sir. I have no objection to a description but for the question to include the [fol. 25] word "required." I think calls somewhat for a conclusion, and I think in view of the fact that we are dealing with semantics in many cases—

Judge Biggs: I think the objection should be sustained. Rephrase the question.

Mr. Rhoads: Thank you, sir.

By Mr. Sawyer:

Q. Will you describe the demeanor and deportment of the students during the reading of the Bible?

A. Attention was asked and I would say almost demanded.

Mr. Rhoads: I object to the last and ask that it be stricken out, sir.

The Court: Just a moment, please.

The Court is of the view that the witness can state what the teachers told the students in respect to their attitude or what their attitude should be. We think the objection

should be sustained to the question. We order it stricken out and you will re-ask, rephrase the question.

Mr. Sawyer: Yes, Your Honor.

By Mr. Sawyer:

Q. Was there ever an occasion, Ellory, when the teacher gave any directive to the class as to their deportment or conduct during the reading of the Lord's Prayer?

A. Yes, there was.

[fol. 26] Q. And what was that directive, if any?

A. I have frequently heard teachers say to the class to be quiet or to pay attention, as the case required.

Q. And during the recitation of the Lord's Prayer was there any directive given by the teachers or any of them to the students on any occasion?

A. Not specifically, no.

Q. Now, did there come a time when you objected to the reading of the King James version of the Bible and, if so, will you tell us when it was and under what circumstances.

A. In late November of 1956, I had over a period of time been thinking about the matter and had come to feel that it had been, the compulsory reading of the King James version of the Bible was a infringement upon my right to think and believe religiously as I wanted to, and at this time I brought a copy of the Koran into class and while the Bible was being read I read this, and at the time that the rest of the students rose to repeat the Lord's Prayer I remained seated and continued reading the Koran.

By Mr. Rhoads:

Q. Reading the what?

A. Koran.

Judge Biggs: Koran, K-o-r-a-n.

By Mr. Sawyer:

[fol. 27] Q. Now, before we pursue what happened as a result of that, Ellory, let me ask you: What were the features of the religious conscience and thought to which you

objected in respect to the reading of the King James version?

A. I felt that, well, on two points. First of all, I felt that it was a clear violation of the separation of church and state, and that the Bible reading was a religious practice being condoned and forced by the state, and I objected on that point, and also on the grounds of my own personal feelings of religion, I do not believe in the Bible literally and I felt that being read as it was in class it suggested that it was to be taken literally.

Q. Well, let me ask you this at this point: What is your religious affiliation?

A. Unitarian.

Q. And—

Mr. Rhoads: If Your Honors please, I understand that, of course, particularly this last bit of testimony is all subject to my general objection—

Judge Biggs: Yes.

Mr. Rhoads: —sir, so that I won't be—

Judge Biggs: The Court understands that all of this witness's testimony goes to, your general objection goes to all of this witness's testimony.

[Feb. 28] Mr. Rhoads: Thank you. Because I thought this latter was particularly within the scope of my earlier objection, sir. Thank you.

By Mr. Sawyer:

Q. Could you give for the benefit of the Court examples of matter contained in the King James version with which you disagree or with which you take exception from the standpoint of conscience?

Mr. Rhoads: This, sir, I think is objectionable on the further ground, sir, I don't think that the picking out by this witness of individual excerpts from the King James version and then parsing them as an expert before this Court is the type of evidence to warrant hearing.

Mr. Sawyer: Does Your Honor wish to hear me on that point?

Judge Biggs: Yes.

Mr. Sawyer: It seems to me, Your Honor, that we will need to remember as we progress with this case that there are obviously in this kind of case going to be a number of types of evidence which would be quite inconceivable in an ordinary issue. Now, the issue here, which I am developing, is the religious conscience of this particular individual, and it seems to me highly germane to know what there is in this version of the Bible which is contrary to his religious beliefs, if anything.

[fol. 29] Judge Biggs: I think we will admit this testimony subject to the ruling that the Court will strike it out if it deems it irrelevant. All three of us are inclined somewhat to regard it as irrelevant. We don't think it ought to be pursued too far.

Our point of view, so it may be explicable to counsel, is simply this: Suppose he doesn't like the King James version; suppose he does. The main point of this case is that the witness, in effect, takes the position there should be a separation of the powers of church and state. That's true whether he liked the King James version or whether it was some other religious book which was being read. However, since this case may well go to the Supreme Court, we think that probably this should be included in the record at this point, subject to the motion to strike.

We will ask you, Mr. Sawyer, not to pursue it too far.

Mr. Sawyer: Your Honor, I shall abide by your ruling. I'd like to say this: I was prepared to pursue it at considerable length. I was prepared to, both with this witness and his father in particular, to develop in a rather full fashion the particularities of religious doctrine to which they objected because on this thought, Your Honor, that, I quite agree, in fact we probably are the ones who most strongly [fol. 30] assert that it is totally sufficient if there is an objection whether or not we develop particular aspects, but it seemed to me at least that it would be helpful to the Court to see the full dimension of this problem if these points of differences and religious conviction were brought out.

Now, in deference to Your Honors' ruling, I will curtail that in both the case of Ellory and his father. If I may be permitted merely to suggest the scope of that kind of disagreement—

Judge Biggs: Well, now, suppose you begin and see how far we think you should go.

Mr. Sawyer: Let me suggest this, if I will, and Your Honor, I will withdraw that question if I may and I will shorten it by asking specific questions of doctrine which the witness will perhaps answer simply yes or no. That will be shorter.

Judge Kirkpatrick: Mr. Sawyer, don't you think you have just as good a case if this witness said, "Yes, I believe every word of the King James version. I believe it is literally true, every word of it. I think it should not be read in the schools because it breaks down the separation between church and state." Wouldn't your case be just as good?

Mr. Sawyer: We'd have one of the points, Your Honor, I think, and not the other. I think the case has got two [Vol. 31] points. One is the, referring to the establishment clause, arguing for the complete wall, but the other one is that not only may the state not favor all religion over no religion but it may not also favor one sect over another sect. That second portion, it seems to me, you must have some proof that the practice involved is sectarian.

Judge Kraft: But is this witness qualified then to appear to do what you apparently want him to do, and that is to testify as an expert in the interpretation of it?

Mr. Sawyer: No, sir.

Judge Kraft: The Bible itself or the different versions of the Bible are themselves expressly indicative of their differences.

Mr. Sawyer: Well, I certainly do not purport to have him testify as an expert. He is speaking only from his standpoint of his own religious belief. I will offer experts in the course of this hearing. But this witness is only to testify as to his own religious belief and the way in which—in other words; it also has to do with whether we have, it seems to me, a justiciable controversy. Do we have a controversy here in which someone's freedom of conscience is really offended? That may have a possible bearing in some cases. And I also anticipate from the pretrial conference, [Vol. 32] and that is what it is for, I think, so that we know our respective positions, that Mr. Rhoads will argue that

this is non-sectarian, that it is after all not offensive to most people. I mean I think that was the gist of one of his points. So that if I gathered that incorrectly I am sure Mr. Rhoads will correct me. But I think that was one of the concepts of the defense which we developed, Judge Biggs, during the pretrial conference.

I will go very slightly—

Judge Biggs: Just a minute.

Mr. Sawyer: Oh, excuse me.

Judge Biggs: Will you proceed, Mr. Sawyer, along the lines indicated. We think that you are entitled perhaps, subject to our subsequent determination, to develop the subjective attitude of this witness toward these particular things which were done in this school while he was there as it affected his individual conscience.

Mr. Sawyer: Yes, sir.

Mr. Rhoads: Will Your Honor hear me just a moment?

That I take it, sir is not quite the thrust of the questioning of Mr. Sawyer. Mr. Sawyer is now attempting to point out that there are certain phases of actual doctrinaire belief [fol. 33] in which this witness differs from what he conceives to be the teaching, if you will, of the King James version. He says that the basis of that is to establish sectarianism. I suggest, sir, that you don't establish the constitutional fact of sectarianism by simply having a witness get on the stand, whether in expressing his conscience or otherwise, and saying I don't believe in certain things that happened to be read. That doesn't prove the objective of Mr. Sawyer's point.

Judge Biggs: I think probably you are correct.

Mr. Rhoads: Thank you, sir.

Judge Biggs: Let's see what the questions are and rule on them as we go along.

Mr. Rhoads: Thank you, sir.

By Mr. Sawyer:

Q. Mr. Schempp, as a Unitarian—strike that.

Mr. Schempp, do you believe in the divinity of Christ?

A. I do not.

Q. Were you read in the course of your instruction at Abington High School material from the Bible which asserted the divinity of Christ?

A. Yes, sir.

Q. Do you believe in the Immaculate Conception?

A. No.

[fol. 34] Q. Were you read material during the course of your time at Abington High School which asserted the truth of the Immaculate Conception?

A. There was.

Mr. Rhoads: Excuse me, may I ask one question?

By Mr. Rhoads:

Q. Is this all from the ten-verse reading of the Bible in the morning that you are now speaking, Ellory?

A. At one time or another, yes.

Q. But it all comes from those readings; is that correct?

A. Yes.

By Mr. Sawyer:

Q. Do you believe in God?

A. Yes.

Q. Do you believe in an anthropomorphic God?

A. No.

Q. Were you read material from the King James version during your time in school which asserted the concept of an anthropomorphic God?

A. Yes.

Q. Do you believe in the concept of the Trinity?

A. No.

[fol. 35] Q. Were you read material from the King James version during your time at Abington which asserted the truth of the concept of the Trinity?

A. I believe so.

Q. Now, Ellory, to return to the occasion on which you—

Mr. Rhoads: If Your Honors please, I assume that you do not wish me to move to strike at this time. It is all subject to my objection.

Judge Biggs: All subject to your motion.

Mr. Rhoads: Thank you, sir.

Mr. Sawyer: That, Your Honor, was a curtailed version

of what I had intended to go into but I think it brings out the scope.

By Mr. Sawyer:

Q. Now, what happened, Ellory, on the occasion in which you did not participate in the reading of the King James version and did not stand during the reading of the Lord's Prayer? What took place thereafter?

Mr. Rhoads: Now, if Your Honors please, in order that the record may be clear, may I have the precise time that this occasion, in this circumstance—

Judge Biggs: Designate the time.

By Mr. Sawyer:

Q. Yes, repeat that time. I interrupted you in that part of your version. You should repeat that incident and when it happened.

[fol. 36] A. It was in late November of 1956, in the morning devotional period, I brought a copy of the Koran and read it during the Bible reading.

By Judge Kirkpatrick:

Q. You mean read it aloud?

A. Read it to myself. And then as the rest of the class stood up for the Lord's Prayer I remained seated and continued reading it.

By Mr. Sawyer:

Q. And what happened?

A. Well, soon thereafter the home room teacher came to my desk and said that hereafter I should stand for the Lord's Prayer. I replied to him that I do not feel that I could do this in keeping with my religious conscience and asked that I, or said that I thought I should be excused from the morning devotions.

Q. May I interrupt you, please. Just one question, Your Honor, to return to a doctrinal point, just one.

Ellory, do you believe in your own conscience in the concept of petitional prayer?

A. I do not.

Q. Now, you continue.

Judge Biggs: We take it that your objection goes to the question.

[fol. 37] Mr. Rhoads: Yes, Your Honor. I am deliberately, sir, not objecting constantly because I understand that you would prefer that I shouldn't do so; that I may have the opportunity to renew my objection, motions to strike in due course or at the time of argument.

Judge Biggs: Even if you don't the Court will treat them as if they were renewed and will examine the pertinency of the questions and the answers.

Do we have an answer to that question? I am not sure I got it.

Mr. Sawyer: Will you read the question, Mr. Stenographer, please.

(The reporter read as follows:)

"Q. Ellory, do you believe in your own conscience in the concept of petitional prayer?"

"A. I do not.

"Q. Now, you continue."

By Mr. Sawyer:

Q. Will you continue with the event that you were describing.

A. Some discussion ensued between myself and my home room teacher as to matters of—

Judge Biggs: Don't talk quite so fast.

The Witness: —as to matters of individual religions and at the end of this discussion he told me that I should [fol. 38] go down and see the principal of the high school.

By Mr. Sawyer:

Q. And did you do that?

A. I did that. The full principal was absent and so instead I saw the vice-principal and—

Q. What is his name?

A. Mr. Peck. And we discussed the matter there to

some, for some time without much conclusion being reached, and at the end of this time the assistant principal suggested that I go down and see the guidance counsellor of the high school, which I did.

Q. What transpired with the guidance counsellor?

A. Well, further discussions—

Mr. Rhoads: May we have his name, please.

By Mr. Sawyer:

Q. Yes, the name of the guidance counsellor?

A. Miss Brennan. Further discussion ensued which was not too relevant to the, to my, what I had done, merely matters of social custom and how they related to the religious principles of various people, and at the end of this time I went back to my classes. There had been no conclusion reached at any time. It was just discussion and that is about all.

[fol. 39] Q. And was there any other event that took place subsequent to that, and if so what was it?

A. Oh, yes. My guidance counsellor did suggest that I come down to the guidance office in the mornings instead of going through with the regular practice of morning devotion, which I did for the rest of the year.

Q. And how long did you continue to do that?

A. Until the end of my school year, '56-'57.

Q. And did that practice continue during your senior year?

A. At the beginning of my senior year I asked my new home room teacher if I could not be excused from morning devotions.

Mr. Rhoads: May we have her name, please?

The Witness: Miss Lucas. She immediately sent me to the assistant principal again, whose name—Mr. Karem, and this was on a Friday, September 13, I believe. We discussed the matter there to some extent and he felt at this time that it would be all right if I went down to the auditorium—

Mr. Rhoads: If Your Honors please, I ask that the witness not characterize the gentleman's feelings but tell us just exactly what happened.

Judge Kirkpatrick: Doesn't it mean the same thing? I [fol. 40] mean it is just a short—I don't think there is any use of that objection.

The Witness: He said that I could go to the auditorium instead of sitting through morning devotions.

On Monday the 16th, before classes began, I received a notice that I should report to him again, and this time he told me that he had decided that I would not go to the auditorium and that I should remain in the home room and go through with the morning devotions as the rest of the students did.

By Mr. Sawyer:

Q. And did you do that, sir?

A. I did that. He had stated that I must do it in order to show respect and because and simply to obey a school rule; that matters of conscience and religion were not as important here as merely conforming to the school rule.

Q. And thereafter did you conform to the school rule in all respects or was there an occasion when you—well, did you conform to it in all respects?

A. For the next several days I sat in class but did not pay strict attention and, in fact, was busy doing other work, homework perhaps or maybe I was reading, I don't recall.

Q. And what happened as a result of that?

[fol. 41] A. And on Wednesday the 18th the assistant principal again contacted me and told me that I must show complete respect by not doing any other work during the morning devotional period and that I must pay attention.

Q. And did you comply with that order?

A. I complied with that for the remainder of the year.

Q. And being in compliance with that order, was there any other further incident with regard to the school authorities or did that close the issue?

A. It closed the issue pretty much.

Mr. Sawyer: Will Your Honors indulge me just one moment?

Judge Biggs: Yes.

Mr. Sawyer: Cross-examine.

Cross examination.

By Mr. Rhoads:

Q. Ellory, you had these experiences in 1956 and seven with your home teachers that you have just described; is that right?

A. That's true.

Q. Any other experiences?

A. Well, with my fellow students. We had been discussing related issues but not with the administration.

Q. I mean with the school authorities.

[fol. 42] A. None, no.

Q. So that you have told us all that you have to tell with reference to anything that happened between you and the school authorities?

A. As I remember.

Q. As you remember. Now, on September 13 and 18 in these discussions which you had with your home teacher, or others, the upshot of it was that you were requested to return to the devotional services in the morning and pay attention; is that correct?

A. That's true.

Q. And you did pay attention?

A. Yes.

Q. Now, formerly, that is in 1956, differing as you did with the exercises at the opening of school, you deliberately did not pay attention, did you?

A. That's true.

Q. And you manifested that deliberate failure to pay attention by reading something else openly during the course of the devotional services; is that correct?

A. That's true.

Q. And was that a method of your expression of your conscience?

A. That was a method of expressing that I did not agree with their practice; that's true.

[fol. 43] Q. Now, you reported, I suppose, the circumstances of the September 13-18, 1956, events to your parents, did you not?

A. I did.

Q. Did your parents come to see anybody at the Abington Schools?

A. They did not.

Q. Did your parents request that you be excused from attendance at any of these morning exercises?

A. Not to my knowledge.

Q. Now, when did you enter the Abington Schools, Ellory?

A. Well, the Abington School District and Roslyn Elementary School, 1948 I believe.

Q. And you are now eighteen?

A. That's true.

Q. And it was approximately less than two years ago that you felt that there was something entirely foreign to your conscience, let me put it that way, in listening to those devotional exercises, as you have just described them, in the morning?

A. That's true.

Q. And up to November of 1956 you had not felt that way; is that correct?

A. No, that's not correct. I had been thinking about it [fol. 44] for some time; I had not decided what I could do or should do until that time.

Q. And did you talk to your parents about it before you talked to any of the teachers?

A. Several times.

Q. Yes. Now, Ellory, you are a Unitarian, are you not?

A. That's true.

Q. You graduated this last spring?

A. True.

Q. Have you any sisters or brothers?

A. One brother and one sister.

Q. Now, did you report the fact of your difference with this practice in Abington to anyone other than your parents?

A. Yes. We had, my fellow students and I had discussed them on several occasions.

Q. Now, how about others who were not connected with the Abington School?

A. I believe my parents had discussed it with friends and relatives.

Q. Now, did you write any letters to anybody about this practice up in Abington?

Mr. Sawyer: Your Honor, I would like to ask Mr. Rhoads to approach at side bar.

Judge Biggs: I am not sure to what—I realize this is [fol. 45] cross-examination; I am sure we are prepared to allow considerable latitude.

Are these questions directed to the good faith of the witness?

Mr. Rhoads: No, sir, these questions are directed primarily to the question of the witness's conscience, sir. They have to do with certain correspondence which this witness had with the American Civil Liberties Union. And in view of the fact that he spoke about an occasion in 1956, I thought it would be appropriate for the Court to know exactly what this witness said in 1956 in order that the record may be clear.

Judge Biggs: You are prepared to show what he—

Mr. Rhoads: I have the copies of the letters here, sir.

Judge Biggs: Mr. Sawyer, have you any—

Mr. Sawyer: Your Honor, Mr. Rhoads in so mentioning this transgresses an express understanding which he and I had and I am most surprised that he has done so.

Judge Biggs: And where, Mr. Sawyer—I don't recall any of this at the pretrial.

Mr. Sawyer: No, sir, it was between Mr. Rhoads and myself and his office.

[fol. 46] Now, Mr. Rhoads asked me if I would submit to him, in fact, he said in lieu of a subpoena, correspondence which, if any, took place between this witness and the American Civil Liberties Union.

I said that it seemed to me that there was, that he had no ground for this whatsoever under subpoena, but since I thought he was quite clearly barking up the wrong tree, I wanted him to see the correspondence with this understanding, and I did. I brought it to his office, with this understanding, that before—it was asked if I would produce it, you see, here, and this was in lieu of that, but before there would be any use of this on his part or reference to

it, that we would have an opportunity to submit this to Your Honor and to see whether or not it was relevant.

Now, the matter has been brought forward, I think it is my understanding, in derogation of that agreement.

In that case, it seems to me, that the correspondence should be examined. I think it's quite irrelevant. It doesn't seem to me it would make a particle of difference whether the American Civil Liberties Union started this case or they didn't.

It so happens, Your Honor, that Mr. Schempp, Ellory Schempp, wrote to the American Civil Liberties Union and [fol. 47] initiated their interest in the matter. In fact, he wrote a number of letters before that organization even evinced any interest in the matter, if it makes any difference. I maintain that it doesn't make any difference, but since it has been brought out I think that it should at least be made clear from the standpoint of none other than public relations and my own position that the initiation came entirely from him, and the letters will so show, and not from any organization.

Now, if the Court thinks it is relevant, I suggest that all of the correspondence which Mr. Rhoads has copies of, which I furnished him under this understanding, that we have an opportunity to discuss in chambers with Your Honor whether such a subpoena was reachable for this material.

Mr. Rhoads: Well, if Your Honors please, may I suggest that it is only, I am sure, on very rare occasions that my good faith in a situation of this kind is challenged, and I don't think Mr. Sawyer means it in the way in which certainly I interpreted it. I told Mr. Sawyer that, of course, I would not use any of his correspondence without giving him a full opportunity in the first instance to register his objection, to object to its relevancy, to discuss it either in open court or with Your Honors in chambers. And I am sure that my question, without presenting a [fol. 48] single document to the witness, clearly is in accordance with my own understanding, and I am now prepared to interrogate the witness regarding a letter, but my friend has had full opportunity, I take it, to object

to the relevancy and the materiality of anything that I may be asking this witness.

Judge Biggs: Mr. Rhoads, I am not at all sure that you are not spending too much time on an issue which is certainly perhaps collateral, but it does seem to me that your questions are in effect directed to the good faith of the witness, to some degree at least; and I say "good faith"—perhaps that is an inappropriate term; let me say the strength of his conscientious belief, directed to that perhaps rather than to the issue of good faith.

It would seem to me that you should limit your questions here to whether or not there was correspondence between the witness and the American Civil Liberties Union. When it comes to the question as to whether or not the letters shall subsequently be admitted, we will take that under advice, and we will also take these questions and their answers subject to a motion to strike.

Mr. Rhoads: I am wondering, sir, whether I might merely have the letters identified by the witness so that at [fol. 49] least we would then—

Judge Biggs: You can introduce them in your case in chief.

Mr. Rhoads: Exactly, sir.

Judge Biggs: Have you any objection to them?

Mr. Sawyer: No, but I don't think there is any—

Judge Kraft: Gentlemen—just a moment, Mr. Sawyer—before we lose track of where we are on this record, it strikes me that your objections were occasioned by a very simple question which, in effect, asked him if he wrote to the American Civil Liberties Union, and that I think is the only question presently pending to this witness.

Mr. Sawyer: Well, I think that is correct, Your Honor, and I object. But the reason I made the further statement was that it seemed to me that I think that this is, this kind of an aspect of the thing is completely irrelevant; it is a red herring, if you will, which hasn't got anything to do with the issue.

Judge Biggs: Well, it may be. The Court is not at the present time describing it, deciding whether or not this be a red herring.

I think the quickest course would be—mind you, we are sitting here without a jury: the Court has complete command of this record.

[fol. 50] I think we will let the question be answered.

Will you answer the question, please.

Read the question to the witness.

Well, let's save time. The question had to do with: Did you have correspondence with the American Civil Liberties—

Mr. Sawyer: I think the question is: Did you write—

By Judge Biggs:

Q. Did you write to the American Civil Liberties Union?

A. I did.

The Court: Yes. Go ahead from there.

Mr. Rhoads: The answer is yes?

The Witness: Yes.

Judge Biggs: He answered yes.

By Mr. Rhoads:

Q. May I ask you, Mr. Schenpp, Ellory, if you please: I show you a photostatic copy of a letter Ellory F. Schenpp signed, November 26, 1956, the American Civil Liberties Union, and ask you whether you wrote that letter.

A. Yes, I did.

Q. Now, I show you a copy of another letter from Spencer Coxe, addressed to you, of December 6, 1956. Did you receive the original of which that letter is a copy?

A. Yes, I did.

[fol. 51] Q. I now show you a photostatic copy of a letter of February 2, 1957, signed Ellory Schenpp, and ask you whether that is the letter which you wrote?

A. True.

Q. I now show you a copy—

Judge Biggs: How many of these are there, Mr. Rhoads?

Mr. Rhoads: There are just three more, sir.

Judge Biggs: Very well, go ahead.

By Mr. Rhoads:

Q. —a copy of a letter of February 8 from Spencer Coxe to yourself and ask you whether you received that.

A. True.

Q. That is '57, is it not?

A. Yes, sir.

Q. The same with March 4, '57?

A. True.

Q. And April 12, '57?

A. Yes.

Mr. Rhoads: I now ask that these letters be marked for identification.

Judge Biggs: Mark them for identification subject to the objection. They are not yet in evidence. And let them be marked as one group for identification.

[fol. 52] (Letter addressed to Mr. Ellory Schempp from Spencer Coxe, dated April 12, 1957; letter addressed to Mr. Ellory F. Schempp from Spencer Coxe, dated March 4, 1957; letter addressed to Mr. Ellory F. Schempp from Spencer Coxe, dated February 8, 1957; letter addressed to Civil Liberties Union from Ellory F. Schempp, dated February 2, 1957; letter addressed to Mr. Ellory F. Schempp from Spencer Coxe, dated December 6, 1956; and letter addressed to American Civil Liberties Union from Ellory F. Schempp, dated November 26, 1956, were marked in a group as Exhibit D-1 for identification.)

Mr. Rhoads: I will not have any further interrogation with reference to those letters.

Judge Biggs: Thank you.

Anything on this side by way of cross-examination?

Mr. Rhoads: No, I meant about these letters.

Judge Biggs: Oh, thank you.

Mr. Rhoads: Will Your Honor indulge me a moment?

Judge Biggs: Yes.

Mr. Rhoads: No further questions.

Judge Biggs: Are there any further questions from that side of the—

Mr. Rhoads: These gentlemen are all my associates.

[fol. 53] Judge Biggs: I see. Thank you.

Anything in rebuttal?

Mr. Sawyer: No, Your Honor; no further questions.

Judge Biggs: Any further questions of this witness?

Thank you very much.

You will stand down, please.

Judge Biggs: Your next witness, Mr. Sawyer.

Mr. Sawyer: Edward Schempp.

EDWARD L. SCHEMP, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sawyer:

Q. Mr. Schempp, are you the father of Ellory Schempp who just testified?

A. I am.

Q. And do you have other children, sir?

A. Two others who are down there in the front row.

By Judge Biggs:

Q. Those are all you have, aren't they?

A. That's right; three all together.

[fol. 54] Judge Biggs: Thank you.

By Mr. Sawyer:

Q. And are those children students in the public high schools of Abington Township?

A. They are.

Q. Now, have you had occasion to discuss with your children their feelings with regard to the morning devotions which are carried on in the schools of the Township?

A. We have discussed them on numerous occasions.

Q. And from the standpoint of your own religious conscience, sir, do you have objection to the practices that are carried out therein and which have been described here by your son Ellory?

A. Definitely. Ellory has said very much what I would have said myself.

Q. What—

By Judge Biggs:

Q. Very much what he would have said or what you now say yourself? Have your views changed in this matter?

A. No, my views are identical with Ellory's as he gave it here.

Judge Biggs: Thank you.

By Mr. Sawyer:

Q. What are the grounds for your objection to this practice, Mr. Selanipp?

[fol. 55] A. The Bible reading in the school, is given by the manner of presentation, the ten verses without comment, is given a degree of authority or devotion or religious significance above normal school authority, in my opinion; and then under that particular atmosphere statements are read from the Bible, from the literal Bible with which I do not agree.

Q. But what would be such statements? Give some examples of statements in the Bible with which you do not agree.

Judge Biggs: The same objection, I take it.

Mr. Rhoads: Yes, sir.

Judge Biggs: We will receive it subject to strike.

The Witness: Well, we have Leviticus where they mention all sorts of blood sacrifices, uncleanness and leprosy. Nobody believes in these things today.

Mr. Rhoads: Objected to, sir, for other reasons, of course.

Judge Biggs: Yes. The objection is overruled subject to a motion to strike.

The Witness: Nobody believes in these things today yet they are in the Bible. And in some parts, some of the lower grades the children are allowed to select verses and they [fol. 56] could just as well pick verses from Leviticus. I don't believe that they would be picked by an adult.

The Old Testament has Jehovah as a God of vengeance. We have—there is a verse sandwiched right in between the Ten Commandments in which "God will visit the sins upon the fourth generation." That has been read in Abington High School.

A human father would not visit the sins upon the children of a fourth generation, in my opinion. That makes God less than man and I do not want my children believing that God is a lesser person than a human father. My concept of God is bigger than that.

We have parts—another part that says something like, "The animal that dies of itself—" or "The meat that dies of itself thou shalt not eat," but then "Thou mayest feed it to the stranger within thy gates." That's nothing—that's quite foreign to my concept of being good and religious and moral. There's many things like that.

By Mr. Sawyer:

Q. And do you attend any church with your children, Mr. Schempp?

A. We attend regularly the Unitarian Church of Germantown.

[fol. 57] Mr. Sawyer: Cross-examine.

Mr. Rhoads: No questions.

Just a minute. Excuse me, just one question.

Judge Biggs: Certainly.

Cross examination.

By Mr. Rhoads:

Q. Mr. Schempp, how long have you been a resident of Abington Township?

A. About 1948 I believe we moved up there, didn't we?

Q. And was that about the time your eldest son Ellory went into school?

A. As we moved up there he automatically went into school.

Q. What is your business, sir?

A. I am an electronic engineer.

Q. Who is the present head of the Abington School System in Abington Township?

A. Dr. English I understand.

Q. You have testified as to the reasons which lead you to disagree with the practice that has been mandated by

the Legislature of Pennsylvania and is in practice in Abington High School, and you have given us your reasons; is that correct?

A. That's right.

Q. Have you ever complained personally to Dr. English?
[fol. 58] A. I don't think he would have done anything about it.

Q. I am not asking that.

Judge Biggs: Answer the question.

The Witness: No, I have not.

By Mr. Rhoads:

Q. You have not.

Have you ever made any objection such as you have registered here to any person in authority in the School District of Abington Township?

A. No.

Mr. Rhoads: That's all.

Mr. Sawyer: Thank you very much, Mr. Schempp.

Judge Biggs: Just a moment, please.

Mrs. Forer, we see that you are here and we understand that you are a member of the bar of this court, are you not?

Mrs. Forer: Yes.

Judge Biggs: You are a member of this bar?

Mrs. Forer: Yes.

Judge Biggs: Of this court?

Mrs. Forer: Yes.

Judge Biggs: Very well. We only ask this question because we are not sure whether or not you are here on a watching brief or whether you might desire to ask some [fol. 59] questions. Do you or don't you?

Mrs. Forer: No. I at this point—the Attorney General, as you saw, was here, and I think we are all here just to observe, and at this point; so far as I know, the Attorney General is taking no part in the case.

Judge Biggs: All right. To use a phrase of the Society of Friends, if the Spirit should move you and you desire to ask questions, will you rise, please.

Mrs. Forer: Thank you.

Mr. Rhoads: If Your Honors please, as long as that issue has arisen, may I ask that the record show that the Attorney General of Pennsylvania has heretofore been notified, of course, of the pendency of this suit and is fully aware of what is involved therein, as I think Your Honor well knows.

Judge Biggs: Notified by the clerk in accordance with the statute.

Mr. Rhoads: Thank you, sir.

Judge Biggs: Your next witness, please.

Thank you very much. You may stand down, please.

Mr. Sawyer: Will Your Honor indulge me for one moment?

[fol. 60] Judge Biggs: Yes.

Mr. Sawyer: If Your Honor please, I have also to put on very brief testimony from the two younger Schempp children.

Judge Biggs: Very well.

Mr. Sawyer: But I have in the courtroom an expert witness and I think he would be able to finish conveniently this afternoon and, therefore, I would like to put him in even though it may be in a sense out of order because I want to come back to the Schempp family before I finish.

Judge Biggs: You will defer the examination of the two Schempp children then until this witness is concluded?

Mr. Sawyer: Yes, sir, I should like to.

Dr. Grayzel.

DR. SOLOMON GRAYZEL, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sawyer:

Q. Dr. Grayzel, would you give us your educational background, please, sir?

A. Well, I—

[fol. 61] Judge Biggs: Doctor, would you please keep your voice up; forget that you have a loud speaker before you. As a matter of fact, this is on a Sound Scriber device.

which is being tested. The court reporter here is also making a record. Speak back so that Mr. Rhoads and the gentlemen at counsel table can hear you. Keep your voice up. We can hear you but I am not sure they can.

The Witness: I will try.

Judge Biggs: Yes.

The Witness: I was graduated from the City College of New York and Columbia University. I went to a Rabbinic school in New York, the Jewish Theological Seminary. I was ordained there, then I received a doctorate of philosophy from the Dropsie College in this city.

By Mr. Sawyer:

Q. And have you specialized in any particular studies in connection with your doctorate, sir?

A. My specialty has been medieval history, specifically medieval Jewish history.

Q. And what writings are they?

Judge Biggs: Just a moment.

By Judge Biggs:

Q. What dates would you call covered by medieval Jewish [fol. 62] history?

A. Why, anything from I should say 300 to the French Revolution, to 1800, thereabouts.

By Judge Kraft:

Q. You are speaking now of what calendar?

A. Of the general calendar, the Christian Era.

By Mr. Sawyer:

Q. And would you tell us what publications, if any, you are the author?

A. I have written a book on The Church and The Jews in the 13th Century, and another one on The History of the Jew.

Q. And what is your present—

Mr. Rhoads: History of the Jew?

The Witness: That's right.

By Mr. Sawyer:

Q. And what is your present employment?

A. I am the Editor of the Jewish Publication Society.

Q. And you are also—are you an ordained rabbi, sir?

A. Yes, yes.

Q. And are you here at this trial representing any particular organization?

A. Well, I should like to make that perfectly clear, if you don't mind. I am here only, speaking only for myself. Neither the Publication Society of which I am the editor [fol. 63] nor any part of the Jewish community here or anywhere in the United States asked me to come here. I speak only and solely for myself.

Q. And in your work as Editor of the Jewish Publication Society are you engaged in any work in connection with the Bible?

A. Well, the Jewish Publication Society published its, or the Jewish— Let me put it this way: It published a translation of the Bible, that is the Jewish Bible, the so-called Old Testament, into English some forty years ago, a copy of which I have here, and we are currently engaged in a re-translation of the Bible into English, utilizing modern, the modern English, I say contemporary English.

Q. Is the Bible that you refer to the one that is already, the older one, not the one that is now in progress, is that known as the Masoretic Text?

A. Yes, it is called the Holy Scriptures. According to the Masoretic Text—

By Judge Biggs:

Q. How do you spell that, please?

A. M-a-s-s-o-r-e-t-i-c. Now, that is a very simple word. It is an Anglicized Hebrew word. It simply means traditional, the text as it was, as it has been handed down from ancient times, literally, without changing a single letter or a vowel.

[fol. 64] By Mr. Sawyer:

Q. Is it an element of importance within the Jewish religion that the precise wording of the Holy Scriptures be exactly unvaried?

A. Yes, it is very important that the Masorah, the Masoretic Text, be adhered to very strictly.

By Judge Biggs:

Q. How do you spell Masorah, please?

A. M-a-s-o-r-a-h. But that applies, of course, only to the Hebrew, you understand that. It has nothing to do with the English translation.

Q. No, I don't follow you. What do you mean? You mean that it's very important that the Hebrew text be exactly the same?

A. That's right.

Q. But it is not important whether or not the English translation of the Hebrew text is the same?

A. Yes, the translation may vary as one person understands the Hebrew text or another understands it. If you compare the King James version, which is also in large measure based upon the original Hebrew text, with our translation, you will find a great many variations because they understood the Hebrew text in one fashion and we understood it in another.

By Mr. Sawyer:

[fol. 65] Q. Would you comment on the differences in what is included, not speaking now of textual or doctrinal differences but differences in what is included in the King James version—strike that, please.

First of all, are you familiar with the King James version of the Bible?

A. Fairly familiar.

Q. Now, will you tell us then the differences in content between the Jewish Bible and the King James version?

Judge Biggs: Just a moment, please.

By Judge Biggs:

Q. First of all, what is an ordained rabbi? Isn't there some other word of art used when a rabbi is instituted in office, rather than "ordained"?

A. I can't think of any.

Q. In other words, an ordained rabbi, the word "ordained" is as appropriate there as an ordained minister in the Episcopal Church?

A. That's right.

Q. It's ordained?

A. That's right.

Q. Not instituted or inducted or anything like that?

A. No, just ordained.

Judge Biggs: Have you finished your endeavor to qualify this witness as an expert?

[fol. 66] Mr. Sawyer: Yes, I offer him as an expert, sir.

Mr. Rhoads: I object to it, sir. I don't think that this witness has in any way qualified himself as an expert, certainly for an answer to the question which has just been presented to him in which he has been asked to point out the differences between certain texts in the King James version and other texts, be they Jewish or otherwise. And I object for the further reason, sir, that it seems to me that there is, that it's no part of this case to have a contrast textually between a Jewish version, a Catholic version and a King James version as such.

The question is a simple one: Whether the reading of the King James version, whatever that is, is contrary to certain specific clauses of the federal and state Constitutions which have been outlined by my friend. We are dealing here with a practice and we can get into, it seems to me, the most abstruse differentiations and classical problems that would bring this record into undue length I think in view of the very simple issue that is involved. I object on the ground that he is not qualified, and for the further reason that the question as asked is not pertinent.

[fol. 67] Judge Biggs: This raises a major issue in the case, gentlemen. It was discussed at pretrial at some length. I don't think any conclusion was reached in respect

to it. My recollection is that I stated that this issue would have to be deferred until the other two judges who would sit with me were present. And I think we will retire to Judge Kirkpatrick's or Judge Kraft's chambers, or my chambers, and consider this matter.

Mr. Sawyer: Does Your Honor mean with—

Judge Biggs: And we would like to have counsel. Suppose, if you be good enough, to come down to my chambers. Will you do that, please, and the Court will stand in recess for at least fifteen minutes, at least until 3:30.

Will counsel come to my chambers, please, and everyone else, we will call back everyone else when we have concluded.

Mr. Rhoads: Does Your Honor object if I bring my associates with me?

Judge Biggs: Of course not. All counsel are invited to come down to my chambers.

(Recessed at 3:13 p. m. and reconvened at 3:40 p. m.)

Mr. Sawyer: Dr. Grayzel, will you take the stand again, please.

Judge Biggs: Now, we understand that Mr. Rhoads [fol. 68] made an objection to the qualification of this witness.

We sustain the objection and give you leave to further qualify the witness.

Mr. Sawyer: Thank you.

DR. SOLOMON GRAYZEL, resumed.

Direct examination (continued).

By Mr. Sawyer:

Q. Dr. Grayzel, you testified that you were a graduate of the Jewish Theological Seminary of America. What kinds of studies are pursued and did you pursue at that institute?

A. Well, the studies involved every phase of Jewish literary and religious life. Speaking in terms of studies, there are, of course, theological studies and there is Hebrew liter-

ature, Bible, Talmud, medieval literature—it is practically interminable.

Q. Is it a theological institute?

A. Yes.

Q. Is it an institute which deals with and specializes in the study of one particular aspect and branch of the general scope of theology?

A. Of Jewish theology, yes.

Q. Jewish theology?

[fol. 69] A. Yes.

Q. And what is meant when you also refer to it as a Rabbinic institute?

A. Well, it would take me some hours to describe the duties, the history of the development of the rabbinate as an institution.

Q. What is it, what is that institution, sir?

A. It is, originally, basically the rabbi is an expert in Jewish lore, in theology, in Bible, and in the literature that developed out of the Bible. He is basically a teacher and a guide of the legal aspects and the theological aspects of Jewish life.

Q. And—

By Judge Kirkpatrick:

Q. Well, you have read and studied the Jewish Holy—

A. —Scriptures.

Q. —Scriptures in the original Hebrew?

A. Yes.

Q. You are familiar with the Hebrew language and you can speak it, I have no doubt.

A. Yes.

Q. And you read and studied the whole of the scriptures in the Hebrew language?

A. Yes. The Hebrew Scriptures in the Hebrew language.
[fol. 70] yes.

By Mr. Sawyer:

Q. And you said that you got your Ph.D at Dropsie College?

A. That's right.

Q. And what kind of an institution is Dropsie College?

A. Dropsie College is a graduate institution for the further study of research, or rather research in Jewish studies and studies allied with it. For example, at Dropsie College there is studied not only the Hebrew language more profoundly and the Bible more, in more detail but also Arabic, Assyriology, history, anything pertaining to Jewish life and Jewish sources.

Q. And you also testified with regard to a translation, a new translation of the Jewish Holy Scriptures. What have you to do with that and the translation is from what language to what language?

A. Well, as the Editor of the Jewish Publication Society I am part of the Translators Committee. We have a committee of the foremost Jewish scholars in, Bible scholars and very learned rabbis representing the various viewpoints in Judaism, and we translate practically word for word from the Hebrew, naturally, with the aid of all sorts of commentaries in every kind of language and all the versions that preceded ours, but it is primarily on the basis of the Hebrew language.

[fol. 71] Q. And in the course of your studies have you had occasion to read the Bibles of other faiths other than the Jewish faith?

A. Certainly.

Q. What would some of those Bibles have been which you had occasion to read and study?

A. Well, the King James version is, of course, basic for the simple reason that it's a remarkably well done translation for the 16th century, for the Jacobean times. And then, of course, there is the American translation and the most recent revised standard version, which is a reputable piece of work.

Q. Are there Catholic versions which you have also read?

A. Oh, yes, we consult the Catholic versions. But you realize—I don't know whether you would know about it, but from the point of view of the Catholic the important thing is church doctrine, whereas to us the important thing is what the Hebrew of the Bible actually says, regardless of whether we agree with it at the present time doctrinally or not.

Mr. Sawyer: Your Honor, I renew my submission to the Court that Dr. Grayzel is competent to testify as an expert.

Judge Biggs: Any objection?

Mr. Rhoads: I would like to reserve my objection, sir, [fol. 72] but I am sure that Your Honors will hear this witness and give me the privilege of objecting at the proper time if we find that there may be substantive objections as his testimony develops.

Judge Biggs: It is so ordered. Will you proceed.

By Mr. Sawyer:

Q. Now, Dr. Grayzel, are there any books—first of all, is there any general section of the King James version of the Bible which is not to be found in the Jewish Holy Scripture?

A. Our sacred books consist of the three divisions which—we divide the Bible into three parts, the Torah, which is the five books of Moses, the prophetic portion from, I mean the historical books and the Prophets from Joshua down to the end of the prophetic tradition Malachi, and then the sacred writings, including everything else, the Psalms, the Proverbs and all the others down through Chronicles, which this differs considerably from the Christian tradition in the order of the books and in the contents of the Bible.

Q. In the view of the Jewish church do all of the books have equal importance and weight from the standpoint of their religious value?

A. There is a distinction which every Jew makes. The [fol. 73] highest sanctity is ascribed to the five books of Moses.

By Mr. Rhoads:

Q. That is the Torah?

A. The Torah. Lesser, somewhat lesser sanctity is ascribed to the historical and the prophetic books, and least sanctity, though sacred too, naturally, is ascribed to the so-called sacred writings, Psalms and the rest.

May I add this: That in the King James version, of course, the order of the books is completely different, I

mean from a Christian viewpoint understanding, and, besides, there is added the New Testament, which the Jewish Bible naturally does not have at all.

By Mr. Sawyer:

Q. Now, the Jewish Bible, in other words, does not contain the New Testament?

A. No.

Q. Now, what is the position of the Jewish religion regarding the New Testament?

Mr. Rhoads: Now, if Your Honors please, may I here register a little different objection. I do not think that a description of the Jewish tradition has any part in the case which is presently before us.

Judge Biggs: I think the answer to the question would generally be admissible. We will overrule the objection [fol. 74] subject to a motion to strike.

Judge Kirkpatrick: May I ask one question before you leave the Old Testament.

By Judge Kirkpatrick:

Q. Does the King James Old Testament contain any books that are not in the Hebrew Scriptures?

A. The Old Testament, no. The same books are contained in both but in different order.

Judge Kirkpatrick: That is all that I wanted to know. All right, now go ahead with your other question.

The Witness: What is the question, sir?

By Mr. Sawyer:

Q. The question was this: What is the position, the doctrine of the Jewish religion with regard to the New Testament, specifically with regard to the figure known as Jesus Christ?

A. The Jews have, naturally, not believing in the divinity of Jesus, have no place at all for the New Testament or any part of it. They consider it, the writing, I mean the books themselves, each individual book was practically

in every case written by a Jew or a former Jew but it is not part of the Jewish tradition and sometimes certain portions of it are distinctly offensive to Jewish tradition.

Mr. Rhoads: Would it be improper, sir, to possibly ask [fol. 75] the question whether Dr. Grayzel could define for us what he means by "tradition"?

Is that the same thing that we might call faith, a Christian faith, a Jewish faith, a Catholic faith?

Judge Biggs: I think we are getting into rather deep issue here and I think it would be better to reserve that for cross-examination.

Mr. Rhoads: Thank you, sir.

The Witness: I don't mind answering it.

Judge Biggs: I think it is a little bit out of place until you come to cross-examination.

Mr. Rhoads: I beg Your Honors' pardon.

By Mr. Sawyer:

Q. Dr. Grayzel, I will ask you. You said at the end of your last answer that it would be regarded as offensive. How would you describe it, the word "offensive" having connotations both of a religious and non-religious nature, how would you describe it, what would be the words that you describe it from the religious standpoint? What would it be called, the concept of the divinity of Christ?

A. I don't want to step on anybody's toes but the idea of God having a son is, from the viewpoint of Jewish faith, practically blasphemous.

Q. And was that concept, in the view of the Jewish faith [fol. 76] the assertion by Christ of divinity in that sense of the word, the crime of Christ in the view of the Jewish church at the time?

A. If that incident happened, I mean Jesus—

Q. If the incident happened would it have been such assertion?

A. It would have been offensive, yes.

By Judge Biggs:

Q. Would it have been blasphemous?

A. Blasphemous, yes.

By Mr. Sawyer:

Q. Now, are the portions of the Old Testament which in the view of the Jewish religion are imbued with a Christological significance in the King James version.

Mr. Rhoads: What?

The Witness: Christological.

Mr. Sawyer: Christological, yes. Intending to indicate, if I may say—maybe I better ask the doctor what it means.

Judge Biggs: Suppose you ask the doctor.

The Witness: Well, Christological means anything pertaining to Christ, anything pertaining to Jesus. And there are any number of passages in the Jewish Bible, in the Old Testament, which the church interpreted as referring to Jesus. I mean it's quite naturally understandable. For [fol. 77] example, when you speak of—I think of a simple instance—when you speak of “a Scepter shall not depart from Judah,” that in the King James version, I am practically certain, the word “Scepter” would be capitalized because it refers to Jesus, in the Christian tradition or the Christian faith. In our translation I am equally sure it would be written small. Or take, it occurs to me, if I may offer another example of it, at the very beginning of the Bible you have the description of the Creation, “And the Spirit of God hovered—or floated, whatever the word is—on the face of the waters.” Now, in every Christian translation the word “spirit” would be capitalized because the assumption there is that it's a reference to the Holy Ghost.

Now, the Jews understand it, assuming that it does mean “spirit,” it means the actual presence, the essence of God and it would not be capitalized. You will find in our translation that it is with a small “s”.

Now, these physical differences sometimes manifest themselves also in differences of translation. Any number of passages in the King James version will have a superscription—better define that—in the Christian Bible especially you have the various passages, the various Psalms described, summarized by a brief statement which is not essentially in, of the Bible but is a description of the translator or the editor of what the next passage contains. Now, that we call a superscription.

Judge Biggs: In legal parlance a head note, gentlemen.

The Witness: That's new to me.

Now, that superscription very frequently will say that this refers to Jesus; it describes Jesus' life.

I could—if you will give me a moment I can give you any number of Psalms where that superscription is, definitely says that refers to Jesus.

Judge Kirkpatrick: Well, the Act doesn't require the superscription to be read in the school, does it?

Mr. Sawyer: No, sir, but we have testimony that the children in the lower grades read the Bible themselves and, therefore, they have the King James version in front of them and it is presumed they see the superscription.

Mr. Rhoads: The question is what is read and there is no evidence whatsoever at any time, by children or teachers, that superscriptions have been read.

Judge Biggs: I think that's correct. I think the answer [fol. 79] should be stricken out unless you can tie it in to some prior testimony or something which may be offered hereafter.

Mr. Sawyer: Well, I submit, Your Honor, that if you place into the hands of a child a copy of the King James version, and if all copies of the King James version have the superscriptions, that it is inevitable that the child will see and perhaps read the superscription, but at least he will read it mentally, whether he reads it out loud or not. Now, we have an instance that the children themselves read the Bible in the lower grades, although it's done over the loud-speaker system definitely.

Judge Biggs: I think in all probability I ruled in error. I think it should be admitted.

Mr. Rhoads: Will Your Honor grant me an exception so to at least register my objection.

Judge Biggs: Yes. I think in view of the explanation given by counsel it is pertinent. If we find it to be not pertinent, we will strike it out.

Mr. Rhoads: Will Your Honors hear me just a moment in order that the record may be clear as to my objection to this. There is not the slightest suggestion in this case, nor has there ever been, that any superscriptions, marginal notes, head notes, or otherwise, are being read at any time

[fol. 80] by anybody in the Abington Public School System. The issue here is whether the reading of ten verses, without comment, of the Holy Bible at devotional services, in the morning so-called, is unconstitutional.

Now, for my friend to blithely make the suggestion that because somebody may have before him, a child or otherwise, a head note, a syllabus, a marginal note, particularly when in the act of authorization of the King James version in 1604 King James himself decreed and ordained that marginal notes, as I recall it, sir, were not to be included. Now, the marginal notes are no part of the Holy Bible from the point of view of the issue that is before us here. They may be to scholars part of the Holy Bible but they are not parts of the Holy Bible that are involved in the suggested interdiction of its reading by virtue of the proceeding which is before Your Honors.

Judge Biggs: I think we grasp the point.

Mr. Rhoads: Thank you, sir. I simply wanted to make my point a little more clearer.

Mr. Sawyer: Your Honor, in view of our agreement in chambers that we wouldn't overdo the number of instances, I would like to invite the doctor's attention to one or two verses by name.

I assume that you won't consider that leading but it will [fol. 81] save time.

Mr. Rhoads: Not at all.

Judge Biggs: Very well.

Judge Kirkpatrick: Before you leave the New Testament may I ask just one more question and then I will subside.

By Judge Kirkpatrick:

Q. Does the Jewish church accept the historical fact, for example, that an individual named Jesus was actually executed by the Romans, as a historical fact, regardless of who he was or anything else?

A. That would have nothing to do with the religion.

Q. Yes, that is what I mean. As history, do they accept—

A. Historically, in history there have been some voices raised in disagreement but generally speaking the historical fact is accepted.

Judge Kirkpatrick: That is all that I wanted to know. All right.

By Mr. Sawyer:

Q. Could I invite your attention, Doctor, and ask you to comment on any differences that you find in Isaiah 7:14?

Judge Biggs: Isaiah 7:14?

Mr. Sawyer: Yes.

Judge Biggs: 7th Chapter, 14th Verse.

The Witness: Yes. The 7th Chapter of Isaiah speaks of [fol. 82] a situation in which the prophet pointed to or expressed himself, "Behold, a virgin shall conceive, and bear a son, and call his name Immanuel."

Q. Now, what version are you reading from there, sir?

A. This is the King James version.

Q. How does that language appear in the Jewish—

A. In the, in our version it reads, "Behold, the young woman shall conceive and bear a son and shall call his name Immanuel." It is "the" and "young woman."

Now, the translation "young woman" was in this instance accepted by the revised standard version. Not all Christian sects have approved, but in this instance the old Jewish translation was accepted, but they still say, "a young woman," which is admissible from the point of view of the Hebrew text. But there we come up against a distinct difference in religious faith. The Jewish attitude was that the prophet was speaking about a situation which existed right in front of him. The king had a young wife and she was pregnant and the prophet turned to the king and said, "Now, this young woman who has conceived," or if she wasn't pregnant, "will conceive and she will bear a child and his name should be," as we interpret it poetically speaking "Immanuel," which is the Hebrew for "God is with us."

[fol. 83] Now, the Christian church subsequently took this, as it did any number of other passages, as a prophecy, a prediction of things that were to happen many centuries later and took the words "young woman," which could be from the Hebrew viewpoint, could be either a married young woman or an unmarried young woman, took it to

be a virgin. And so you have here an example, one of the basic examples of deviations between the two, the differences between the two faiths.

Q. Now, Doctor, as a rabbi, could you comment on the religious aspect from the standpoint of Jewish faith of necessarily reading the Bible without comment.

A. Again, here is a difference in attitude: I don't know to what extent it is prevalent among Christians at the present time. In Judaism the Bible is not read, it is studied. There is no special virtue attached to a mere reading of the Bible; there is a great deal of virtue attached to a study of the Bible. And it, therefore, always strikes me, speaking for myself, as rather peculiar that anything such as reading the Bible should be an important matter. I can understand, and let me, to make my position clear, I want to state it quite firmly, that I think it is more important for Christian children or Christian adults to read and to study the Bible, to study it. But as soon as you begin study [fol. 84] ing the Bible in the school, of course, there you have a distinct violation of a basic principle of Americanism.

Judge Biggs: Let me ask this question—

Mr. Sawyer: I didn't mean for the doctor to go on and make that comment. I think that may be stricken. I will agree to that.

Mr. Rhoads: I would like to ask that all of the doctor's last answer to Mr. Sawyer's question be stricken because it seems to me—

Judge Biggs: I am not sure where the answer should be divided. I think it might be well that the whole answer be stricken and then you ask the question again and you may omit the characterization.

The Witness: I am awfully sorry about it.

Judge Biggs: That is quite all right, Doctor. This is a difficult subject, Doctor.

By Mr. Sawyer:

Q. Let me put my question this way: As a rabbi are you familiar with instances in which confusion has arisen

in the minds of children with whom you have come in contact as a rabbi as a result of the mere reading of the Bible without explanatory comment or interpretation by somebody authorized and qualified to do so in the Jewish faith, and if so could you give us such an example?

Mr. Rhoads: If Your Honors please, may I object to that [fol. 85] question in its present form and in substance?

Judge Biggs: We think the question is admissible. We will overrule the objection.

The Witness: If I may answer that question, I would like to cite, with all due respect to Mr. Schempp who testified just a little while ago, the statement that he made, and indicate how the Bible is misunderstood when it is taken without explanation. I mean this reference to a passage in the Bible in Leviticus, which certainly is rarely read, but if an animal is found dead, killed or died naturally, that a Jew may not eat it but a non-Jew may.

Now, if you study the passage it becomes perfectly clear that it was not an act of contempt for the non-Jew but an act of further sanctification for the Jew. He was to abide by certain rules. But since the non-Jew in those days, and presumably now, wouldn't hesitate to eat that kind of animal, you are not to deprive him of it. But as a Jew you are not supposed to eat it. Now, that does not come out from a mere reading of the Bible but it does come out from a study of the Bible, and there are any number of such instances.

Judge Kirkpatrick: You were asked about the particular [fol. 86] cases of children that you were familiar with who were confused.

The Witness: Yes. Now, there are children who have come to me, I mean Jewish children, naturally, who have come to me and on some occasions—I used to be a teacher, too. That I didn't say before—and told me that or asked for explanations of certain readings which were made to them and which led to discussions afterwards with their fellow students, much to their dismay because their answers just came out second best.

For example, such a simple story as the sale of the birth right by Esau to Jacob. Now, if you read the passage as

it is written, without paying too much attention to it, it is possible, as happened, for a child, for a non-Jewish child to come to a Jewish friend and say, "I see now your ancestor was a cheat. He took advantage of his brother who came in tired and hungry and made him give up something valuable for a mess of pottage."

But the point of the story, which I had to—I remember having to explain to the complaining child—was the last phrase in it. The point was, "Thus, Esau despised his birthright."

It wasn't the question of whether Jacob took advantage of him or not; the point of the story is that Esau had so little regard for his birthright that he was ready to sell [fol. 87] it or give it away for a petty thing.

Judge Biggs: How does that go to the issue of sacrilege or blasphemy?

The Witness: No, that's—

Mr. Sawyer: That doesn't Your Honor. That goes to a different issue, which is the possible confusion which we say is very likely, if not inevitable, when the Bible is read without comment, as under this statute it must be, and he is giving an example, and he gave another one from Mr. Schenck's own testimony; he said, now, here is Mr. Schenck who interprets this about the meat not being eaten by Jews but can be given to strangers as being a very harsh rule, and he says that if you explain that, if that comes to you in the aegis of the church, if that book were read to you under the aegis of a church or even a family, there is someone there who can explain what that means according to their likes, and without that explanation the child may get an impression—we can't say whether it is a true or false one because what is true or false is relative in this particular case now—it may get an impression contrary to what its religion believes to be true.

Judge Biggs: Well, I can see how it can have sociological significance but how does confusion have religious significance?

Mr. Sawyer: But isn't it to the interest of the church [fol. 88] and didn't we have testimony so far as to the

Jewish church that the text is important, that is if the religion believes that the particular text that they follow and the particular book that they use is indeed the work of God, either in the sense of it having been God who moved the hand of those who wrote, or at least those who wrote wrote with Divine inspiration, then to a person so religiously oriented it becomes an extremely important matter whether or not the person, the child hearing it might come away with a false impression as to what that religion says God meant by the particular passage involved.

By Mr. Sawyer:

Q. Now, to move on again, Doctor, by specifically calling your attention to a passage, would you refer in the King James version to portions of Matthew 23, which, to refresh all of our recollections, I would ask you first to read and then to comment upon from the standpoint of the Jewish faith and, secondly, from the standpoint of the reaction of a Jewish child, if it's been within your experience, to that passage.

A. Well, in Matthew 23 we have an address of Jesus about his contemporary Jews, and in several portions of that chapter he says—I am reading Verse 13 from the King James version—"But woe unto you, Scribes and Pharisees, [fol. 89] hypocrites! For ye shut up the Kingdom of Heaven against men," and so on, and then that's repeated later on on the various, where he makes various points. And it seems perfectly clear that a Jewish child subjected to this kind of reading, and finding that his, the traditional leaders of his religion are being called hypocrites by the most important personality of the religion of the other children, are not going to be very happy about it.

Q. And how about Matthew 26, sir?

A. Is it 26? No. It is—I think you refer to Chapter 27.

Q. I am sorry.

A. Which discusses—

Q. The scene of the conviction.

A. —the crucifixion and the conviction. And the scene is, if you recall, where he appears, where Pilate, Pontius Pilate comes out on the balcony of his palace and asks

the crowd down below whether they would choose that he release Jesus—may I read—which is called Christ and, or Barabbas, who was a thief. And Verse 22: "Pilate saith unto them, What shall I do then with Jesus which is called Christ? They all say unto him, Let him be crucified.

"And the governor said, Why, what evil hath he done? [fol. 90] But they cried out the more, saying, Let him be crucified."

And then when Pilate saw that he couldn't prevail, he washed his hands and said that he is clear of this sin.

"Then answered all the people, and said, His blood be on us, and on our children."

And I submit to you that this verse, this exclamation has been the cause of more anti-Jewish riots throughout the ages than anything else in history. And if you subject a Jewish child to listening to this sort of reading, which is not at all unlikely before Christmas or before Easter—rather, before Easter, I think he is being subjected to little short of torture.

Mr. Sawyer: Well, all right, if there is no objection to that I will leave it go at that.

(Counsel confer at counsel table.)

Mr. Rhoads: I assume, sir, that this type of testimony is subject to my objection; that is the reason I did not rise to object to the conclusion which our learned friend made when he said this is a little short of torture. I think [fol. 91] that that is completely beyond the scope of this trial.

Judge Biggs: I think so.

Mr. Rhoads: But I think that I can raise the question at subsequent proceedings and that it's unnecessary to do it now.

Judge Biggs: The Court so views, so understands your position.

Mr. Rhoads: Thank you, sir.

Mr. Sawyer: Cross-examine.

Judge Biggs: I think we should go on, gentlemen, until five o'clock, and I think it would be well to state at this point that we will sit starting at ten o'clock tomorrow, take a brief recess, go through Wednesday, but will have to conclude due to engagements of the judges by twelve noon on Thursday.

Mr. Sawyer: Oh, well, Your Honor, of course, I have no idea how long Mr. Rhoads' cross-examination of Dr. Grayzel will be, but for my own part, sir, I have the two younger Schempp children to put on, whose testimony will be necessarily more brief than those who preceded them, both by reason of being somewhat cumulative and because they are much younger, and that is the end of our case except for submission of some documents. And since [fol. 92] it is my understanding that Mr. Rhoads' case will be deferred—

Judge Biggs: It has been agreed to November.

Mr. Sawyer: —be deferred to some other time, I can't conceive that we will run beyond noon tomorrow, unless your cross-examination—

Judge Biggs: Better strike out the word "November." Whatever date Mr. Rhoads and—

Mr. Rhoads: Yes, and Your Honor's agree.

Judge Biggs: Yes, it will be convenient.

Mr. Rhoads: May I suggest, sir, I'm in entire accord with what Mr. Sawyer just said about the question of time.

Judge Biggs: Then you want to conclude now?

Mr. Rhoads: I would suggest it to Your Honor that it might help in the orderly development of the cross-examination of a witness of this distinction if I might have the evening to consider his testimony and either limit or in some way circumscribe the amount of my cross-examination.

By Judge Biggs: (

Q. Doctor, you live in the environs here?

A. Yes, yes.

Q. Would tomorrow morning be all right with you?

[fol. 93] A. Yes, perfectly all right.

Mr. Rhoads: If that would be convenient to the doctor —of course, I could go on now if Your Honor wishes me to do so.

Judge Biggs: No. I have only one question which I would like to clear up.

By Judge Biggs:

Q. Doctor, I have attended a number of Bar Mitzvah ceremonies of my friends who were rather of your religion. On those occasions the Torah was always read.

A. That's right.

Q. Isn't that a reading of the Five Books of Moses?

A. That's right. That is a public reading which is supposed to be preceded by a private reading. Now, they don't do it nowadays, I grant you that, but it is a public reading for religious purposes, but the actual reading of the books for the individual is supposed to have come before.

Q. Are there not comments made by the rabbis present at a Bar Mitzvah ceremony, and also by the candidate. I think it is a manhood ceremony, is it not?

A. That's right.

Q. And by his father or his uncles, or something of that sort, which really interprets the Torah?

A. It's not necessarily an interpretation. The rabbi [fol. 94] address is probably an interpretation, the others are, in modern times, more in the nature of religious exhortations which have little to do with the reading, with the text read.

Judge Biggs: Thank you, Doctor.

Mr. Rhoads: Would you have any objection, sir, if we then adjourned until tomorrow?

Judge Biggs: No. I am agreeable.

Mr. Rhoads, do you see anything in the case thus far in respect to your cross-examination, which would continue the case much beyond tomorrow noon?

Mr. Rhoads: I couldn't conceive of it, sir. Frankly, I think my cross-examination would extend not beyond a half to three-quarters of an hour, as I can see it, at the outside.

Judge Kirkpatrick: Well, that is all right then.

Mr. Rhoads: And I have, as you know, no testimony, sir, because of the understanding which you have been good enough to make with counsel.

Judge Biggs: Very well, then, I think it would be appropriate if Court adjourned this case—maybe we better say “adjourned this case,” because I believe the Court will be sitting in other matters very promptly at nine o'clock [fol. 95]—until ten o'clock tomorrow morning in this courtroom.

Mr. Rhoads: Thank you, sir.

Judge Biggs: Court will now stand adjourned.

(Adjourned at 4:25 p. m. until Wednesday, August 6, 1958, at ten a. m.)

[fol. 96]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

Excerpts From Transcript of Trial—August 6, 1958

Philadelphia, Pa.

[fol. 97]

Before Hon. John Biggs, Jr., Chief Judge, Third Judicial District.

Hon. C. William Kraft, Jr., District Court Judge.

Hon. William H. Kirkpatrick, District Court Judge.

APPEARANCES:

Present: Henry W. Sawyer, 3rd, Esq., and Wayland H. Elsbree, Esq., for the Plaintiffs.

C. Brewster Rhoads, Esq., Percival R. Rieder, Esq., Philip H. Ward, Esq., and Sidney L. Wickenhaver, Esq., for the Defendants.

Thomas D. McBride, Esq., Attorney General of the Commonwealth of Pennsylvania, Harry J. Rubin, Esq., and Lois G. Forer, Esq., Assistant Attorneys General, for the Commonwealth of Pennsylvania.

Second Day

[fol. 98] Mr. Sawyer: Your Honor, when we reached the end of yesterday Dr. Grayzel was on the stand. He had given an answer which, if I am not mistaken, I acceded to being stricken, or at least a portion of it. I would now like to withdraw that remark on my part and attempt to ask one or two more questions of Dr. Grayzel which would, in my judgment, justify that statement remaining in the record.

The statement in question, Your Honor, was about the feeling of torture to the child.

Judge Biggs: Yes.

Mr. Sawyer: And thereupon, with leave of Court, I would like to ask Dr. Grayzel two or three more questions before I—

Judge Biggs: All right. Now, what is your motion in respect to the statement which has been made? I am not sure—

Mr. Sawyer: That my statement saying that I agreed that that latter portion of the statement might be stricken be withdrawn and I have an opportunity—

Judge Biggs: You wish to withdraw that statement that you made?

Mr. Sawyer: Yes, sir.

Judge Biggs: Any objection, Mr. Rhoads?

Mr. Rhoads: Of course I have no objection, sir.

[fol. 99] Judge Biggs: I understand your objection goes generally.

Mr. Rhoads: Oh, yes, the objection goes generally to the line of testimony, and obviously I wouldn't want to hold Mr. Sawyer to a statement made yesterday which he wishes to retract.

Judge Biggs: Very well. Then let the record show that the Court allows Mr. Sawyer to withdraw that statement. And let Dr. Grayzel testify further in respect to that.

SOLOMON GRAYZEL, resumed.

Direct examination (continued).

By Mr. Sawyer:

Q. Dr. Grayzel, have you been a teacher of Jewish children in religious subjects?

A. Yes, I was a teacher for a period of some twenty years or more.

Q. A little louder, please, sir.

A. I taught for some eighteen years right here in Philadelphia at the Gratz College. That is on Broad and York Streets. It's a college for the training of teachers in [fol. 100] Jewish religious schools. Most of the pupils in the college itself ranged from I should say fifteen to about, to over twenty.

Q. Have you ever taught—at any other time have you ever taught younger children?

A. Yes, in my student days in New York I taught children, oh, about ten to thirteen or fourteen.

Q. And either there or in Gratz College did you have an opportunity to observe the effect and the response of children to religious teaching generally?

A. Naturally, it can't be helped. After all, all these children are pupils of the public school.

Q. I hadn't—well, first of all, are you familiar with the general reaction and response to a child to religious teaching that you gave? Are you familiar with that?

A. To my own religious teaching?

Q. Yes, that's right, to your own religious teaching.

A. Yes. If I understand you correctly, all I can say is that some of them were very much interested and some were less interested.

Q. And—

Mr. Rhoads: Meaning all children.

The Witness: Yes, sir.

[fol. 101] By Mr. Sawyer:

Q. Did you also have occasion to have it come to your attention as to the effect upon these children of religious

matter having to do with the story of Christ and his crucifixion?

A. Oh, well, there is a very interesting psychological situation in the case of Jewish children. They are brought up in the midst of a Christian environment. The story of Christianity obviously plays some part in their contacts both in the outside world with their friends and certainly within the school, within the environs of the school. It is inevitable and certainly part of their education—I don't think it is possible to expect anything else—that some thing of the story of the origin of Christianity should be taught or should be discussed.

Very much depends—I am talking now from the viewpoint of the Jewish child and its attitudes and its adjustment to the outside world; its happiness, in whatever term you want to apply to it, is very important how this story is told, how it is taught, and how the child's friends react to it. Given an intelligent teacher—Jewish, Protestant, Catholic, it doesn't matter—given an intelligent teacher that story can be taught in such a way as to leave no scars on the consciousness of the child. I don't know how many [fol. 102] such teachers there are.

The story itself isn't itself to being told in such fashion as to act as a divisive force within the children's—within the society, within the social milieu of the school. And I have had any number of instances where a pupil of mine, let us say here at Gratz College, a high school pupil, would come very much disturbed at the way the story was presented to him.

I am not talking about Bible reading. I mean the way the story is presented, whether in connection with the Bible or not, I don't know. And this passage, for example, to which I referred yesterday, from Matthew 27, is one of the crucial passages.

Q. Now, Doctor, if the passage alone were read in the absence of the kind of instruction and the kind of explanation which you say is possible, what then in your experience would be the reaction of the Jewish child?

Mr. Rhoads: If Your Honor pleases, may my objection go to all of this testimony.

Judge Kirkpatrick: It is a matter of pure argument anyhow.

Mr. Rhoads: Exactly, sir. I didn't want to interrupt the doctor in his—

Judge Biggs: It is obviously a matter of argument, but, [fol. 103] on the other hand, this is a rather shall I say a subject in which the presiding Judge is not particularly skilled. I would like to hear this for the time being anyway.

Let's not pursue this too far along the line embarked.

Mr. Sawyer: This is my last question.

The Witness: I beg your pardon, I have forgotten the question.

Mr. Sawyer: Will the stenographer read that question, please.

{The last question was repeated by the reporter, as follows:

"Q. Now, Doctor, if the passage alone were read in the absence of the kind of instruction and the kind of explanation which you say is possible, what then in your experience would be the reaction of the Jewish child?"

A. I think that without explanation this is a very, very serious matter. I think it can be explained. I think it should be explained. If a teacher reads it in class or wants to tell the story with this passage as part of it, you cannot, I mean, erase it from the Bible, from the New Testament. But given an explanation it can be put in its place and can [fol. 104] leave less harmful effect. But without explanation I think it is a direct accusation and a threat which is very disturbing.

Mr. Sawyer: Thank you, sir.

Cross-examine.

Cross examination.

By Mr. Rhoads:

Q. Doctor, do I understand that the substance of your last questions, the answers to which you have just given, is based upon other than Bible reading without comment in the public schools?

A. Well, I cannot connect it with Bible reading. In my memory I don't recall that any discussion took place. It may have but I don't recall it. Don't forget I taught for some twenty years. But I cannot recall that it was directly connected with Bible reading.

Q. So the—

Judge Kirkpatrick: May I ask just one question, please?

Mr. Rhoads: I beg your pardon.

Judge Kirkpatrick: May I ask just one question?

The Witness: Yes.

Judge Kirkpatrick: It is in line with what you asked.
[fol. 105] Mr. Rhoads: Pardon me, sir.

By Judge Kirkpatrick:

Q. Bible reading is one thing, the Lord's Prayer is another thing. Now, does the Lord's Prayer contain anything which the Jew would find objectionable or offensive from his religious standpoint, the Lord's Prayer itself?

A. The wording of the Lord's Prayer is so completely derived from Jewish sources, from Jewish literary source material, sentence for sentence, almost phrase for phrase, it goes back to rabbinic material or to Biblical material, that to the contents of the prayer there can be no objection. The only objection is to the name, strangely enough. When a Christian calls that the Lord's Prayer he means Jesus. If they would say God's Prayer, I—we say those phrases constantly in the Jewish service.

Q. That explains what I wanted.

A. It is the title of it.

Judge Kirkpatrick: Go ahead, sir.

By Mr. Rhoads:

Q. Now, Doctor, in all, therefore, of your teaching experience you can cite no instance, I understand, in which a Jewish child came to you and complained to you about the reading without comment of ten verses from the Holy Bible in the public schools, is that right?

[fol. 106] A. If you recall, sir, yesterday I pointed out that there was this one instance, the only one that for the

moment I can recall, of the story of Jacob and Esau and the sale of the birthright.

Q. But except for that—

A. Except for that, at the moment I cannot recall anything else.

Q. And you have known, of course, Doctor, that you were going to testify in this case, I suppose, for some time?

A. Some weeks, yes.

Q. Now, Doctor, I understand from your testimony that your criticism about the reading of the Bible is the fact that it is being read and not explained. Is that the layman's judgment of what you said?

A. I think that is correct.

Q. Now, if while the Bible was being read the person who read the Bible gave his or her own version of what was then being read, that would be interpretive reading of the Bible, is that correct?

A. That's right; that's right.

Q. And to the—withdraw that.

Now, Doctor, you have mentioned the fact that you, in so far as you can speak for the Jewish faith or for yourself as representing the Jewish faith, you answered Judge [Vol. 107] Kirkpatrick by indicating that you had no objection generally to the Lord's Prayer except for the use of the word "Lord." And you gave the reasons for it.

A. That's right.

Q. Now, that, the Lord's Prayer, stems from an historic fact, does it not, sir?

A. As the New Testament tells it, yes.

Q. Yes. And the Jews as a faith recognize the historic fact that Jesus the man said what is said in the Lord's Prayer at a given moment in his ministry life, is that correct?

A. Now, Mr. Rhoads, you are—if I answer your question very simply you are going to hurt my scientific conscience.

Q. Well, now, Doctor, I am sure that your scientific conscience is so far greater than mine that I wouldn't want to hurt it, and you answer it in your own way, sir, and forgive my bungling approach to the question, if you will.

A. Well, you see, historically, from the point of view

of historical research, it is not at all certain that all the words attributed to Jesus were actually uttered by him. The only thing that I feel is absolutely certain is that such a personality existed, that he had followers, that he made certain claims, the nature of which is also in doubt, and that eventually the Romans executed him. All the rest, the [fol. 108] various speeches, teachings and what not, are open to doubt as to whether he said them at all, and certainly as to whether he said them in just these words. There were no stenographers in those days. Consequently, when you ask me whether I will admit that he said these words, I cannot in good conscience admit it.

Q. I understand, Doctor, and I understand the scientific basis of your answer. That brings me to the next question. You have had broad experience in translation, have you not, of the Bible?

A. Yes.

Q. Doctor, long before the King James version there was a version of the Bible translated into Latin, was there not?

A. That's right, the Vulgate.

Q. The Vulgate edition. And about when was that translated?

A. Oh, this was very early.

Q. Very early?

A. This was the third century, the fourth century.

Q. And that was translated into the Latin because chiefly the language of religion in those days was the Latin tongue, is that correct?

A. That's right.

Q. Now, there came a time in the history of men when it [fol. 109] seemed rational to translate the Bible into something other than the language of religion, namely, the Latin language, is that right?

A. That's right.

Q. And that is what led to the English translations of the Bible stemming with the final translation of the King James version, is that correct?

A. That's right.

Q. Now, Doctor, whether Jesus said certain things or whether certain acts took place in ancient days, the trans-

lations which were made into English were made, were they not, from precisely the same source materials in the Greek and Hebrew as were the translations into the Vulgate and Latin?

A. So far I go along with you.

Q. Well, is the answer "yes"?

A. If you will let me make certain reservations I will say yes.

Q. Doctor, we are here to have whatever statement you wish to make, sir, because we value your opinion on this.

A. You see, the reservation I want to make is that no translation of anything can be separated from the person who does the translating.

—Q. I understand.

A. If you and I were to translate the same sentence from [fol. 110] any language into English we would—our translations would differ and sometimes would differ as to—because of the differences of our personalities.

Now, you take the translators into the Latin or into the English or into any language. Naturally their translations will differ in line with the differences in their viewpoints. Otherwise you wouldn't have a Catholic translation and a Protestant translation. The Catholics will not think of using the King James version. Their translation, the Douay translation, is completely—not completely different, naturally, but it differs to the extent to which they differ in viewpoint.

Q. Well, now, Doctor, the Douay version of the Bible is a translation which is substantively similar to the King James translation in those areas in which the Catholic faith includes the Books of the Bible; that's correct?

A. No, in which the Catholic faith finds—finds—

Judge Biggs: What was your first word that you said, Doctor?

Judge Kraft: "No."

Judge Biggs: "No"?

The Witness: "Yes."

Judge Biggs: "No."

A. (Continuing) In large portions where there is no doctrinal difference they will be the same, but in

other portions where there is a doctrinal difference they will not be the same. Certainly that is true of the Jewish translation into English and the—and any translation of the Christian. As I pointed out yesterday, I can give you any number of other instances. The words are the—the Hebrew words are the same but the translation differs in accordance with the personality.

By Mr. Rhoads:

Q. And in accordance with the scholarship that is back of the personality?

A. Some times it is a matter of scholarship.

Q. Now, Doctor, will you agree that when the King James version was ordained to be translated in 1604 an attempt was made within the orbit of the then existing scholarship to make an accurate translation into the English tongue?

A. That's right. As they saw it; as they interpreted accuracy.

Q. As they interpreted the original Hebrew and Greek, is that correct?

A. That's right.

Q. Now, there were, therefore, original documents in Hebrew and Greek from which, whatever the translation be, the translation was actually made, isn't that correct, Doctor?

A. That's right, yes.

[fol. 112] Q. And those documents, if you will, historically are the backbone of the substance of the Bible as translated today, whether Jewish, Catholic or Protestant, is that correct?

A. That's right.

Q. Now, Doctor, will you agree with me—I think you used the expression "literary merit"—excuse me, "source."

A. Yes.

Q. Will you agree that in the King James version, as we know the King James version today, Old and New Testament, there are passages of great literary merit?

A. Absolutely.

Q. Will you admit that there are passages of great moral virtue and merit in both the New and the Old Testament?

A. Yes.

Q. Will you agree, Doctor, that the substance of those moral and literary values, or substances which appear in the King James version, actually appeared in the Greek and Hebrew manuscripts from which the translation was made?

A. Yes, of course, but there is always a "but" involved.

Q. Well, excuse me, Doctor. I think you can answer that question yes or no, can't you?

A. Yes.

Q. And the answer is—

A. The answer is "yes."

[fol. 113] Q. —in agreement with me. Thank you.

Now, Doctor, you spoke earlier in your testimony of the Sacred Books in connection with the Jewish faith and that they were divided into three categories, I believe.

A. That's right.

Q. Did I interpret your testimony correctly?

A. Yes, I think so.

Q. Now, who in the Jewish hierarchy determines what shall be the Sacred Books so set apart into these different categories?

A. Oh, my, that is a matter of very long standing. The Jewish canon, if I may use a technical term,—

Q. Yes.

A. —which I think we all understand, was set around the first or second century of the Christian era, and even then it was already a tradition of centuries, a tradition centuries old, that the five Books of Moses were to be given greater, higher status than the Prophetic Books, and that the other writings were of even less standing. So what happened in the second century was simply a ratification of what was already then an old tradition.

Q. So that that Jewish tradition has carried through to the present day, has it not, Doctor?

A. That's right.

Q. And the question of what books shall be placed in a
[fol. 114] higher order than other books is a matter deter-

mined by the hierarchy of the Jewish faith in accordance with this Jewish tradition?

A. Again, if I may correct your statement and then I will answer "yes." I will just correct your statement.

There is no such thing as a Jewish hierarchy, you understand, now, nor was there for a long time, or if ever. This is a matter of history of tradition. It was determined for us two thousand years ago or more and we don't make any changes in that situation. All I can say yes to, therefore, is the fact that there are these three categories of books.

Q. Now, Doctor, coming back to the question of literary and moral values, would you say that there is substantial moral value in the story of the Good Samaritan?

A. It is a good story.

Q. Luke 10:30.

A. Yes. It is a good story.

Q. Well, will you say—

A. It has—now, let me—

Q. I beg your pardon, sir.

A. If you will permit me to go into some elaboration of this. It's a good story and it does have moral value. Yet it is the sort of story which, one, can be read and [fol. 115] leave a very harmful effect, destroying, at least for the Jewish child, all the good that the moral element can offer. Two, it is a story which on the face of it, on the face of it could not have—was modified, did not happen originally or was not told originally as it is now told in the New Testament.

Now, let me start with the second one first. You have the story—I think we are all familiar with it—of this very sick, dead—a dead person or a sick person lying on the road. There are three people who pass by, a priest, a Levite and a Samaritan. Now, notice the Jewish—the Jews, and especially in those days—the divisions still continue to this day, but they were much more strongly asserted in those days—the three divisions were priests, descendants of Aaron who were priests officiating in the temple who had to be pure in order to enter the temple—"pure," I mean ritually pure—the Levites, whose purity was not expected to be so great but they were also descen-

dants of Aaron, and Israelites, ordinary Israelites, who were not subject to the laws of purity quite as much.

Now, think of the story as it must have been told in those days. A priest passes by. He sees what he thinks is a dead body. The laws of purity apply to him. He wouldn't touch it because he would make himself impure and couldn't officiate in the temple. He passes it by. It is [fol. 116] a cruel act. He should have let, forgotten the laws of impurity and should have attended to the burial of the person, but he preferred—being a stickler for the law he preferred to take care of his purity.

Then comes the Levite; the same thing.

Then, along comes an Israelite to whom the laws of impurity do not apply in the same thing and he attends to the person who is lying on the ground.

That story told in this way, as it must have been, has a moral effect and a good story. It is a good story. What happened? In the story as it came to be told the Israelite was obviously removed and the Samaritan put in. Why a Samaritan? Well, the Samaritans and the Israelites in those days, the Samaritans and the Jews were not on good terms. Very likely the Samaritan was deliberately put in as a slap at the Jews of that day who refused to join the Christian Church, because the story on the face of it must have been, must have included priest, Levite, Israelite. That was the division. There was no such division as priest, Levite, Samaritan.

Now, you tell this story in a school to a Jewish child or in the presence of a Jewish child and a Christian child and the Christian child has every right to say, "See, you come of a people that is cruel, that doesn't understand the [fol. 117] decencies of life." And even if the Jewish child is not told that, it is made to feel that, and I submit to you, sir, that that destroys all the moral value of the story. And I don't think that that kind of story ought to be read in a public school where there are—in any public school—because it makes for division rather than for union.

By Judge Biggs:

Q. Who were the Samaritans, Doctor?

A. The Samaritans were a group of inhabitants of Palestine. Their center was around Samaria, which is a city in Palestine, and they followed certain Jewish practices, and then not quite in line with the practices which the official Jewish religion of that day demanded.

Q. Could they be described as unorthodox Jews?

A. Hardly. The Jews looked upon them as pagans.

Judge Biggs: Thank you.

By Mr. Rhoads:

Q. Doctor, in all of your experience you have never had a Jewish child who has come from the public schools and complained to you that the story of the Good Samaritan was unmoral because of the reasons which you have just indicated in your lengthy answer?

Mr. Sawyer: Your Honor, he has answered that question when he said he never had specific—

[fol. 118] Judge Biggs: Well, this is cross-examination.

A. I cannot honestly say that I have had any such instance.

By Mr. Rhoads:

Q. Thank you, Doctor.

Now, coming again to literary values, will you agree that there is great and substantial literary value in the words of the Sermon on the Mount?

A. Yes.

Q. Is there any fundamentally improper fact in your mind that comes from the reading without comment of the statement:

"Blessed are the pure in heart: For they shall be called the Children of God."

A. No, I have no objection to anything in the Sermon on the Mount, were it passage for passage. I can cite you parallels in Jewish literature.

Q. Certainly.

May I go on, Doctor?

A. Yes, please.

Q. From the point of view of literary values is there any offense to you or to a Jewish person in the public schools from Matthew 7:

"Judge not, that ye be not judged."

A. I don't recall what else there is in that context.

Q. Well, assuming that my statement is correct.

[fol. 119] A. Well, assuming that it is just that thing, it is perfectly all right.

Q. Right.

Is there anything other—withdraw that.

Will you agree that in First Corinthians 13 of Paul, which has to do with faith, hope and charity there is anything except fine literary value in that particular passage? I am speaking of—

A. No, without recalling all that goes before it or after it, that part of it is perfectly all right, surely.

Mr. Sawyer: Would you read that passage, Mr. Rhoads?

Mr. Rhoads: While I am getting it, now, if Your Honors please, I will not emphasize on the basis of our discussion yesterday further illustrations. I simply wanted to get illustratively the record in line with our thinking of yesterday.

By Mr. Rhoads:

Q. It is the passage, Doctor, which is Corinthians 1:13—

A. 1:13.

Q. —which commences—and I am not going to read the whole thirteen verses—

A. Yes.

Q. —unless you wish me to do so—which commences:

[fol. 120] "Though I speak with the tongues of men and of angels, and have not charity, I am become as sounding brass, or a tinkling cymbal."

I am sure—

A. Yes.

Q. —that you recall that passage without my reading all of it.

A. Yes, yes, yes. That's right, yes.

Corinthians 1; it is 1 Corinthians—

Q. It is 1 Corinthians, Chapter 13, and the second verse you remember it says:

"And though I have the gift of prophecy, and understand all mysteries, and all knowledge; and though I have all faith, so that I could remove mountains; and have not charity, I am nothing."

A. That's right.

Q. And then it goes on for eleven more verses.

A. Yes.

Mr. Sawyer: The thirteenth verse, I don't know what the doctor's comment would be. I would like to ask him his comment on the thirteenth verse.

Judge Biggs: Has Mr. Rhoads concluded on this issue?

Mr. Rhoads: Yes—no, not on this particular—

[fol. 121] Mr. Sawyer: I didn't mean to interrupt.

Judge Biggs: That is all right.

Mr. Sawyer: I just suggested that before the doctor commented on the implications that this particular verse might be offensive.

The Court: All right.

By Mr. Rhoads:

Q. Now, the thirteenth is:

"And now abideth faith, hope, charity, these three; but the greatest of these is charity."

A: It is perfectly all right. I think it is beautiful.

Q. Thank you.

Now, Doctor, you spoke at considerable length yesterday about the passages of Matthew 23:13 which had to do with Pilate on the balcony and Barabbas, and you remember the testimony you gave yesterday.

A. Matthew—I think you have the citation wrong. It is Matthew 27, if I am not mistaken.

Q. Was it? I beg your pardon, 27. Well, whichever it was, Doctor.

Now, as a matter of historic fact, Doctor, was that a story of Pilate and what he did and said on the balcony?

A. No, sir, I cannot accept that as history.

[fol. 122] Q. You cannot accept that as history?

A. No, sir.

Q. All right.

Now, may I ask you, then, Doctor, whether you can agree with me that whether you accept it as history, what is there said in—what is it, 27?

A. Yes.

Mr. Rieder: Matthew 27:25.

By Mr. Rhoads:

Q. Matthew 27:25 is in fact a translation from original documents in Greek and Hebrew, whether you agree with the historic fact or not.

A. If you agree to withdraw the "Hebrew," because it is not at all certain what language, what the original language of this book was.

Q. Thank you. Well, then—

A. But there was a Greek original.

Q. May we say either Greek or Hebrew.

A. Well, Greek. Let's leave it at Greek.

Q. All right, Doctor, thank you.

Now, Doctor, if assuming that the passage from Matthew that we have spoken of did appear as you have indicated in the original Greek and we had before us the document itself and we had a class in public schools which understood [fol. 123] Greek and the story read from the original Greek in the public schools to the children concerning what was said in Matthew 27 which was just quoted from, would that be objectionable to you?

A. Certainly.

Q. Thank you.

Doctor, I have just a technical question that I would like to ask you, sir, that I don't believe was covered yesterday.

May I inquire where your residence is? I don't think we got that.

A. I reside at the Garden Court Apartments, 47th and Pine Streets.

Q. And you referred to the publication of certain writings, one of them "The Church and Jews in the Thirteenth Century," I believe.

A. That's right.

Q. Could you tell us the publisher of that book?

A. That is officially published by the Dropsie College.

Q. Dropsie College. And when, sir?

A. In 1932—'33, if I am not—I think it was 1933.

Q. Thank you.

And then your other book, Doctor, was "The History of the Jews"?

[fol. 124] A. "A History of the Jews."

Q. "A History of the Jews." Published by whom, sir?

A. Published by the Jewish Publications Society.

Q. May I ask when?

A. In 1947.

Q. Now, one other question which Mr. Sawyer didn't cover. You are with the Jewish Publications Society, editor-in-chief, sir?

A. Well, there is unfortunately no associate editor so I am just the editor.

Q. And how long have you been in that capacity?

A. This is my twentieth year with them.

Q. And—

A. So I came—

Q. During those twenty years you have been doing translation, translating work that you spoke of in your direct examination?

A. Well, no, no, the translation comes into the—it is part of the job, but if you are referring to translation of the Bible from—

Q. I am, yes, sir.

A. Well, that is something that we have undertaken only in the course of the past four or five years. I mean, that's—

Q. And are you aware of the translation which has been [fol. 125] undertaken of the Revised Standard St. James Version?

A. Oh, yes, that's right. One of our—if I may add, the Chairman of our Translators Committee was a member

of that, was the one Jewish member of the Committee of Translators for the Revised Standard Version.

Q. And that was Dr. Orlinsky?

A. That's right.

Q. And was Dr. Finkelstein associated with that group?

A. With the Revised Standard Version?

Q. Yes.

A. No.

Q. Dr. Orlinsky, however, was representing the Jewish faith, one of the—

A. Not the Jewish faith. He was representing Jewish scholarship.

Q. Thank you, sir. Representing Jewish scholarship, is that correct?

A. That's right.

Q. And that group of—how many men undertook that?

A. Oh, there must have been thirty or forty of them.

Q. Thirty or forty. That was a very gigantic undertaking of modern translation, was it not?

A. That's right, that's right.

Q. And the attempt by those translators, including Dr. [fol. 126] Orlinsky, has been to bring to the world the best and newest scholarship that could be applied to the Bible, is that correct?

A. That's right.

Q. And—

A. May I modify that "yes" by adding this:—

Q. Certainly.

A. —The best scholarship, the best Christian scholarship. Dr. Orlinsky was there as an official—as a regular member but he was there more or less by courtesy. He was there to help with the understanding as in line with the Jewish scholarly tradition, Jewish commentators and what not, but when it came to a question of translating for purposes of religious worship, or for purposes of religious study, he didn't have a say and didn't want to have a say.

He told me, for example, of any number of—

Q. You needn't tell us this, Doctor.

A. I beg your pardon.

Q. Thank you just the same.

I have no further questions, Doctor. Thank you very much for your assistance.

Mr. Sawyer: Thank you.

Judge Biggs: There is nothing on re-examination, is there? Do you have any questions, gentlemen?

[fol. 127] (No response.)

Judge Biggs: Thank you, Doctor.

Mr. Sawyer: Roger Schempp.

ROGER WADE SCHEMP, having been duly sworn, was examined and testified as follows:

Judge Biggs: Suppose you move that microphone a little bit further in front of you, Roger. Yes; that's right. Now, take your time and speak up. We will give you all the time you want.

Direct examination.

By Mr. Sawyer:

Q. Roger, where do you go to school?

A. At Huntington Junior High School.

Q. And are you the son of Mr. Edward Schempp, who testified yesterday?

A. Yes, I am.

Q. And is Ellory Schempp your brother?

A. Yes.

Judge Biggs: Will you speak just a little bit more loudly. It would be of some assistance.

By Mr. Sawyer:

Q. How old are you, Roger?

[fol. 128] A. I am fifteen.

Q. And what grade are you in? What grade were you in last year at Huntington School?

A. Eighth grade.

Q. In the eighth grade.

Now, do they read the Bible—did they read the Bible last year in the eighth grade at the Huntington School?

A. Yes, they did.

Q. And who read the Bible? How did they read it at the beginning of the year?

A. At the beginning of the year the kids did read the Bible for a while.

Q. And who selected what they read?

A. The kids themselves.

Q. Who selected which one of the children was going to read it?

A. It was in a system of going around the room. They started from one side of the room and rotated.

Q. When did that take place, Roger? I mean, what time of the day?

A. That was right in the early morning.

Q. And after the Bible was read what happened then, if anything?

[Vol. 129] A. Then we had the Lord's Prayer and the flag salute.

Q. And did you sit or stand for the Lord's Prayer?

A. We stood for the Lord's Prayer.

Q. What did the children do? Did they take any particular posture when they said the Lord's Prayer?

A. Some of them bowed their heads and some of them didn't.

Q. Was there a name for this exercise?

A. Yes, it is called Morning Exercises.

Q. Was there a change in that way of doing it during the course of the year?

A. About the middle of the year—I am not sure about when—but—

Mr. Rhoads: Excuse me, Roger. What year are we talking about?

The Witness: This is—

Mr. Rhoads: This current year?

Mr. Sawyer: The year that has just been over.

The Witness: This is—

Mr. Rhoads: 1957-'8 year?

The Witness: Yes.

Mr. Rhoads: Thank you. Excuse me.

A. (Continuing) I am not sure about the time, but during the year, the course of the year, the Bible reading was taken up by the teachers and the kids did not read it after that.

[fol. 130] By Mr. Sawyer:

Q. And have you ever talked about this Bible reading and saying the Lord's Prayer with your family?

A. I did.

Q. Did you agree with the attitude that your older brother Ellory and your father have about it?

A. I do.

Q. Does your mother agree with that, too?

A. Yes.

Q. Do you go to church of Sunday school, Ellery—I mean Roger?

A. Yes.

Q. Where do you go?

A. To the Unitarian Church of Germantown. I attend Sunday school and church both.

Q. You mean sometimes you go to Sunday school and sometimes you go with the family to the church itself?

A. Yes.

By Judge Biggs:

Q. Or sometimes you do both?

A. Yes.

Q. You go to both church and Sunday school. Thank you.

—[fol. 131] By Mr. Sawyer:

Q. Do you believe, Ellory, in what we call the Divinity of Christ?

A. No.

Q. What do you believe about Christ?

Mr. Rhoads: If Your Honor pleases, I suppose that if Mr. Sawyer wants to pursue this Your Honor—

Judge Biggs: I think he is entitled to.

By Mr. Sawyer:

Q. What do you believe about Christ, Ellory—I mean Roger. Excuse me.

A. I believe he was a great man but I do not think he was some of the other things they claim he has done and is supposed to have happened.

Q. When you say “they claim” you mean that is claimed in the Bible?

A. Yes.

Q. And you have never protested to your teachers or anybody about this practice, have you?

A. No.

Mr. Sawyer: Cross-examine.

Cross examination.

By Mr. Rhoads:

Q. Roger, do you remember when you first spoke to your [fol. 132] mother or father about this Bible reading and why you objected to it?

A. I do not recall.

Q. Was it sometime last year?

A. It was near the time my brother—

Q. What?

A. It was around the time—I would have been thinking of it, too, around the time my brother mentioned it to my father and mother.

Q. About the time—I couldn't quite hear you, Roger.

A. I would have been thinking about it, too, about at the time my brother was talking to my—had mentioned it to my father and mother about the Bible reading case, the Bible reading in the school.

Q. Well, now, do you remember when that was that you decided that you felt strongly about this?

A. It was about the same time Ellory—when he brought it up, I thoroughly agreed with him on the Bible reading; when my brother talked about it with my parents.

Q. Did that have anything to do with about the time that you realized that Ellory would be graduated before you had a chance to tell the Court about this?

A. I had realized that, yes.

Q. It was about that time?

[fol. 133] A. Yes, it was about that time.

Mr. Rhoads: That is all.

Mr. Sawyer: Thank you very much, Roger.

Judge Biggs: Thank you, Roger.

Mr. Sawyer: Donna Schempp.

DONNA KAY SCHEMPPE, having been duly sworn, was examined and testified as follows:

Judge Biggs: Donna, you will keep your voice up as well as you can, please.

Direct examination.

By Mr. Sawyer:

Q. Where do you go to school, Donna?

A. Huntington Junior High School.

Q. And how old are you?

A. I am twelve.

Q. What grade were you in last year?

A. Seventh.

Q. Did they read the Bible in the seventh grade at the Huntington Junior High School?

A. Yes, they did.

Q. When did they read it and how did they read it?

A. They read it in the morning the first thing and it was [fol. 134] read in the beginning of the year by the students.

Q. How did the students—how did they pick what student was going to read it on any given morning?

A. Whoever volunteered.

Q. Whoever volunteered.

And who picked the passage that was to be read?

A. The student.

Judge Biggs: Donna, were you in a different home room than your brother?

The Witness: Yes, I was.

Judge Biggs: Thank you.

Mr. Sawyer: Your Honor, she was one grade below, you see.

Judge Biggs: Yes, of course.

By Mr. Sawyer:

Q. Now, did that—well, after the Bible was read then what happened?

A. Then we would rise for the Lord's Prayer.

Q. And would somebody tell you to rise?

A. Well, it was just done as a matter of habit.

Q. And would the Lord's Prayer then be said—who said it then, everybody or what?

A. The whole class.

Q. And what was this occasion called in the morning? [fol. 135] What did the kids call it?

A. Morning Devotions.

Q. Did the teachers refer to it also as Morning Devotions?

A. The teachers didn't really refer to it.

Q. And did you ever—did you notice at any time that there was a change in this way of doing it, and, if so, what was it?

A. About late November or early December the teacher suddenly decided that she was going to be the one to read it.

Q. And did she then—was she then the one to read it?

A. Yes.

Q. Well, before that what had the teacher done when it was being read?

A. She paid—she would make sure everybody was listening and then she herself would pay attention.

Q. And did you observe any difference in the deportment and attention that was required of the students during the Bible reading than would be during ordinary teaching?

Mr. Rhoads: Objected to.

Mr. Sawyer: It is a matter of her observation, Your Honor.

Judge Biggs: We will take it.

A. Well, during the Bible reading everybody was supposed to make sure they were doing nothing else and that

they were—their eyes were facing the person that was reading it.

[fol. 136] By Mr. Sawyer:

Q. And was that always required when someone or the teacher was reading some other work?

A. Not necessarily.

Q. Now, do you go to a Sunday school?

A. Yes, I do.

Q. Where do you go?

A. The Unitarian Church of Germantown.

Q. Did you ever have anything that was read to you in the Bible which was different from what they taught you in Sunday school?

A. I have.

Q. Could you tell us of any of those that you can remember?

A. Well, I can think of a few. In Sunday school we have been taught that in the Bible that where it says that the devil came down to Jesus and tempted Him, we have been taught that that was just a dream. And it is as a matter of fact in the Bible.

Q. And is there anything else you have heard read to you in the schoolroom that you don't believe in—I mean read to you from the Bible?

A. Well, we have been—well, in the Ten Commandments, where it says, "I am a jealous God," I have come to believe that if a God was ever jealous I don't see how He could be. [fol. 137] good. If that is the type of world that everybody believes in it's pretty horrible.

And also I don't think any man would have the powers to do the miracles that the Bible says He does.

Q. When you say "man," do I take it that you don't believe that Jesus Christ was actually the son of God?

A. I do not believe that.

Q. And did you ever recall any instance where any of your school friends had any particular reaction to Bible reading? Could you tell us about that?

Mr. Rhoads: That is objected to, sir.

Judge Biggs: This would be of your own observation, Donna?

The Witness: Yes.

Judge Biggs: We think we should receive it.

A. Well, I do know a Jewish friend who was listening to a part of the Bible where I think it was when Jesus washed the feet of a man and something happened—I don't exactly recall—and she got almost so fed up with it because she didn't believe in it that she was going to walk out of the room.

Mr. Rhoads: I ask that that be stricken out, stricken from the record, sir, for other than the reasons that I first objected to, for reasons—

[fol. 138] Judge Biggs: Would you state your reasons.

Mr. Rhoads: Yes. It seems to me, sir, that she is now attempting by that testimony to interpret the mind of the—

Judge Biggs: Let it be stricken out.

Mr. Sawyer: It is only being stricken on the ground that the witness hasn't stated her observation but has stated a conclusion of what she assumed the person felt?

Judge Biggs: In my view the witness stated a subjective interpretation of another person's mind as to what was inside the other person's mind. It may be accurate but it is not within the rules of evidence.

Mr. Sawyer: Yes, sir.

By Mr. Sawyer:

Q. Donna, did this friend of yours actually say anything to you about this?

A. Yes, she did.

Q. Will you just tell us as well as you can remember what she said.

Mr. Rhoads: There again, sir, I object.

Judge Biggs: Isn't this hearsay at this point?

Mr. Sawyer: No, sir, it is not hearsay. We are not interested in the truth of the statement but the fact that it was said.

[fol. 139] Judge Biggs: That is right. We will hear you on it.

Mr. Rhoads: Well, if Your Honor pleases, I think it is the barest kind of hearsay. The witness is testifying to what some other child said to her. There is no evidence that the other child isn't perfectly available to testify, and it seems to me that we are opening the doors.

Judge Biggs: The majority of the Court think that this is admissible.

Mr. Rhoads: May I have an exception, sir.

Judge Biggs: We will note an exception.

Mr. Rhoads: I assume I have such an exception without each time requesting it.

By Mr. Sawyer:

Q. What did your friend say, Donna?

A. She said that she was just plain fed up.

Q. Thank you very much.

Have you ever protested to your teachers about this?

A. No, I haven't.

Q. Oh, at any time when you have been in school in Abington—well, first let me ask you—strike that.

How long have you gone to Huntington Junior High School?

[fol. 140] A. One year.

Q. And where did you go before that?

A. Roslyn Elementary School.

Q. And is that in Abington Township?

A. Yes, it is.

Q. Was there ever any hymn singing in that school?

A. There was.

Q. And what hymns did you—can you remember any of the hymns that were sung?

Judge Biggs: We are going back to where, now?

Mr. Sawyer: Roslyn Elementary School, which she attended the year before last, sir.

Judge Biggs: How is that relevant?

Mr. Sawyer: On this basis, Your Honor, that one of the five points that I mentioned in my opening was this contention that one of the evils to be apprehended by such a statute is that by sanctioning under the aegis of the Legislature a sectarian religious observance in the school

that it will be inevitable that on the volunteered motion of the school authorities other religious observances will come in; that this opening of the door and opening of the wall invites and tends to encourage other religious observances. The Lord's Prayer which is in this case I think is of such a character, and if it is true that there is hymn singing it [fol. 141] would tend to sustain that contention of mine.

Judge Biggs: Well, this is in another school at a prior date.

Judge Kraft: Is this in the complaint?

Mr. Sawyer: It is not in the complaint.

Mr. Rhoads: It is not in the complaint, sir; not a word of this is in the complaint.

Judge Biggs: I really have very grave, very great difficulty in perceiving any substantial probative value.

Mr. Sawyer: All right, I will drop it, then, Your Honor. I don't think it is vital.

Judge Kirkpatrick: It doesn't affect your argument one way or the other. You can make exactly the same argument whether this testimony is in or not.

Mr. Sawyer: That is quite so, Your Honor. It goes to the evidentiary argument as to the encroachment.

Judge Kirkpatrick: It may be a valid argument but it doesn't need an actual instance to support it.

Mr. Sawyer: Cross-examine.

By Judge Biggs:

Q. One question before you commence the cross-examination.

Donna, I am not quite clear as to how this public-address system works. Did the Lord's Prayer come to you originally [fol. 142] over the loudspeaker system in the school?

A. They don't have that in our school.

Q. They don't have it in your school?

A. They only have it in the senior high school.

Judge Biggs: Thank you.

Cross examination.

By Mr. Rhoads:

Q. Donna, did you ever ask your mother to complain to the school authorities about the reading of the Bible?

A. I did not.

Q. Did you ever ask your father to complain?

A. I did not.

Q. Now, the practice of reading the Bible was, as you said, a voluntary practice in your room, is that correct?

A. Yes.

Q. And did you ever volunteer to read the Bible?

A. I did.

Q. And on how many occasions did you volunteer to read it?

A. I don't recall.

Q. More than once, though, wasn't it, my dear?

A. I think so.

Q. Now, how many verses from the Bible were read in the morning?

A. Ten.

[fol. 143] Q. Ten.

And after the verses were read the Bible was shut and nothing further was said, is that correct?

A. About the Bible?

Q. Yes.

A. Yes.

Q. And when the Bible was being read did you stand or were you seated at that time?

A. We were seated.

Q. You were seated.

And then at the time of the Lord's Prayer you arose, is that right?

A. Yes.

Q. And your teacher asked you to pay attention, is that correct?

A. Yes.

Mr. Rhoads: I think that is all, sir.

The Court: Anything more, Mr. Sawyer?

Mr. Sawyer: No, thank you.

Judge Biggs: Thank you, Donna, very much, indeed.

Mr. Sawyer: Thank you.

[fol. 160]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

[fol. 161]

DEPOSITION OF CHARLES H. BOEHM—November 26, 1958

Deposition of Charles H. Boehm, taken on behalf of the defendants, pursuant to stipulation of counsel and instructions of the Court, at the office of Montgomery, McCracken, Walker & Rhoads, 15th Floor, Morris Building, Philadelphia, Pa., on Wednesday, November 26, 1958, commencing at 10 o'clock A. M.

Present: Henry W. Sawyer, 3rd, Esq., and Wayland H. Elsbree, Esq., for the plaintiffs.

C. Brewster Rhoads, Esq., Percival R. Rieder, Esq., Philip H. Ward, Esq., and Sidney L. Wickenhaver, Esq., for the defendants.

Russell T. Harris, Jr., Notary Public.

[fol. 162] CHARLES H. BOEHM, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Rhoads:

Q. Dr. Boehm, what is your full name?

A. Charles Harold Boehm.

Q. Where do you live?

A. I live at 1201 Yardley Road, Morrisville, Pennsylvania.

Q. How old are you?

A. I am 55.

Q. Now, Dr. Boehm, where were you born?

A. I was born at Kintnersville, Pennsylvania.

Q. So that you have been a native of Pennsylvania all your life?

A. Yes, I have.

Q. What is your present occupation or profession?

A. I am a school superintendent.

Q. By that do you mean Superintendent of Public Instruction?

A. I am Superintendent of Public Instruction.

Q. Of the Commonwealth of Pennsylvania?

A. Of the Commonwealth of Pennsylvania.

Q. How long have you been Superintendent of Public Instruction of Pennsylvania?

[fol. 163] A. About two and a half years.

Q. And your general offices are in Harrisburg?

A. Yes, sir.

Q. Does your office rate a cabinet position in the government?

A. Yes, it does.

Q. So that you are presently a member of the cabinet of the present administration, is that correct?

A. Yes, sir, that is right.

Q. Now, Dr. Boehm, would you be good enough to give me for the record the benefit, briefly, of a statement of your educational background and the positions of teaching or otherwise which you have held up to the time you became Superintendent of Public Instruction.

A. I am a graduate of normal school, the Franklin & Marshall College, Teachers College. I received my doctorate from Rutgers University.

Q. Could you tell us when you graduated from Teachers College?

A. Teachers College was 1926.

Q. And then Columbia University?

A. I mean, that is the Teachers College of Columbia.

Q. Teachers College of Columbia, 1926?

A. That is right.

[fol. 164] Q. Rutgers when?

A. About 1936.

Q. And what degrees did you have from Rutgers, did you say?

A. Doctor of education.

Q. From then did you go into the teaching profession?

A. Well, I had been teaching prior to that time and then I became a supervising principal, Assistant County Superintendent, County Superintendent, before I held my present position.

Q. Have you therefore been constantly in the educational system of the Commonwealth of Pennsylvania since your graduation from school or college?

A. No, not since graduation from college but graduation from Columbia.

Q. From Columbia. That was 1926?

A. 1926, that is right.

Q. So that from 1926 to date you have been in the educational system—

A. In Pennsylvania, yes, sir.

Q. —in Pennsylvania.

Are you a member of any educational associations or societies?

A. I think I belong to the usual organizations in the administrative field and curriculum of the State, Local and National.

[fol. 165] Q. Would that include the Pennsylvania County Superintendents Association?

A. Yes, it would.

Q. The NEA?

A. That's right.

Q. That is the National Educational Association?

A. Yes.

Q. And the PSEA?

A. Yes.

Q. And that is the Pennsylvania—

A. State Educational Association.

Q. And the AASA is what?

A. Yes, sir, the American Association of School Administrators.

Q. And you are a member of those associations?

A. That's right, sir.

Q. Dr. Boehm, in your official capacity as Superintendent of Public Instruction you are familiar with the statutory provision for the reading of ten verses of the Bible, the

Holy Bible, without comment at opening exercises of the public schools in the Commonwealth?

A. Yes, I am.

Q. May I ask you now whether during the time that you have been in the educational system of Pennsylvania, which [fol. 166] I think goes back to about 1926, the practice of reading the Bible has been in operation?

A. Yes, sir.

Q. The Act, of course, was passed in 1913, so that ever since you have been in the system, it has been practiced pursuant to the Act, is that correct?

A. Yes, it has, yes.

Q. Now, will you tell us whether in all of your experience in the educational system, including the last two years and a half as Superintendent of Public Instruction, you have ever had occasion to have anyone complain to you of the practice of reading the Bible as provided for in the Act of Assembly.

A. I never have.

Q. Does that include also the time from 1926 until the time you became Superintendent of Public Instruction?

A. Yes, sir, it does.

Q. Dr. Boehm, have you formed any opinion based upon your career in public education as to whether the practice of Bible reading now pursued under the Act of Assembly possesses any education value?

A. Yes, I have.

Q. Will you tell us what your opinion is.

A. I think that the reading of the Bible, ten verses with [fol. 167] out-comment in the morning of each day, places upon the children or those hearing the reading of this, and the atmosphere which goes on in the reading, is one of the last vestiges of moral value that we have left in our school system. This stands out as a strong contradiction to the materialistic trends of our time.

Q. And that is your opinion as Superintendent of Public Instruction, is that correct, Doctor?

A. Yes, it is.

Q. Now, may I ask you whether you have any opinion as to the effect upon the educational system should this

practice of Bible reading as prescribed by the Act be taken away.

A. I have. I know of nothing at this time which could replace the reading of the Bible.

Mr. Rhoads: Cross-examine.

Cross examination.

By Mr. Sawyer:

Q. Dr. Boehm, are you familiar with the fact that there are a number of other states which do not permit the reading of the Bible in public schools?

A. Yes.

Q. Is it your testimony that the moral caliber or standing of the children in those states is lower than it is in Pennsylvania?

[fol. 168] A. I have no evidence.

Q. Dr. Boehm, could you tell me, if you know, whether or not it is customary in the school districts of the Commonwealth generally to also say the Lord's Prayer?

A. I would say from general knowledge, yes.

Q. Do you know how that practice was initiated and by whom?

A. No.

Q. Have you ever yourself issued any directive, order, advice or a letter of any kind which stated that was to be the practice at the time the Bible was also read?

A. No.

Q. Would the election as to whether or not the Lord's Prayer were to be said or not be said reside in the principal of the school, the individual teacher, the superintendent of the district, the Board of Public Instruction or Public Education, or in someone in your office in Harrisburg?

A. Presumably this would be a matter of the Board of School Directors.

By Mr. Rhoads:

Q. That is the local Board, do you mean, Doctor?

A. The local Board of School Directors, yes, sir, on the general theory that they have the power to set up the poli-

cies and regulations for the conduct of the local schools, apart from anything that does not violate the law or any [fol. 169] regulation of the Department of Public Instruction.

By Mr. Sawyer:

Q. But generally speaking it is your department, is it not, that has charge of what curricula is to be followed in the public schools of the state?

A. We have statutory requirements to provide broad outlines, but the Superintendent of Schools, either county or district, is charged with the responsibility to amplify and adapt the courses of study to the local districts.

Q. Suppose, Doctor, that other religious practices were initiated in a particular district, such as the singing of hymns, the saying of prayers other than the Lord's Prayer—I am just giving you examples—would that be a matter which would be of interest to and within the cognizance of your department?

Mr. Rhoads: I think that I want to register an objection to that, Henry, not to prevent his answering but simply in accordance with the Judge's instructions yesterday.

Go ahead, you may answer any way you want.

A. I would presume the Superintendent of Public Instruction, that unless there was a question raised with the Department or the Attorney General, this would come within the scope of the local School Board:

[fol. 170] By Mr. Sawyer:

Q. Now, Doctor, I take it from what you have said—but I will ask you—does your office suggest or prescribe any method, any manner in which the ten verses of the Bible are to be read?

A. Not in the two and a half years which I have been there.

Q. Is it your office that selects the King James Version of the Bible as the one that is to be read?

A. No.

Q. Is that again a matter of the Superintendent of the School District?

A. Unless the Board has any regulations, I would presume that the Superintendent makes available any official copy of the Bible.

Perhaps you should delete the word "official." I don't know that there is anything official, just the word "Bible."

Q. That is, in the absence of an expression of direction on the part of the local School Board the matter of selection would fall as one of the comprehensive over-all duties of the Superintendent of the particular district?

A. Yes. It could even fall upon the responsibility of the teacher if the Superintendent hadn't made any selection.

Mr. Sawyer: I think that is all I have.

[fol. 171] Mr. Rhoads: May I just ask one or two further questions.

Redirect examination.

By Mr. Rhoads:

Q. Dr. Boehm, in view of Mr. Sawyer's question directed to you with reference to whether any instructions relative to the reading of the Holy Bible pursuant to the Act of Assembly had been issued during your time as Superintendent of Public Instruction, I show you what purports to be a portion of the report of your predecessor, or a predecessor of yours, Nathan C. Schaffer, Superintendent of Public Instruction of Pennsylvania for the year 1913, and ask you whether you are familiar with the fact that such instructions in point of fact were issued after the Act of Assembly was passed.

A. Yes, I was.

Q. I believe you do not have with you either the original or a copy of Dr. Schaffer's instructions, have you?

A. I do not.

Mr. Rhoads: I now ask that the copy of the instructions of Dr. Schaffer of 1913 be marked Defendant's Exhibit 9-A.

Mr. Sawyer: I object to that subject to or on the basis

of questions that I would like to ask Dr. Boehlin on this [fol. 172] particular matter here.

Do you want me to ask those questions now?

Mr. Rhoads: Surely, go ahead.

(Carbon copy of excerpt from brief filed on behalf of Commonwealth of Pennsylvania, as Amicus Curiae, before the Supreme Court of the United States, October Term 1951, No. 9, in the Matter of Doremus v. Board of Education, et al., at pages 3 and 4, was marked Defendant's Exhibit 9-A.)

Recross examination.

By Mr. Sawyer:

Q. Doctor, you testified you were aware of this?

A. That's right.

Q. When did you first become aware of it?

A. Well, I have been aware of that for a long time. I reviewed it in the last week.

Q. When was the first time you ever read it, sir?

A. Well, the first time I read it was when I went over the history of education in Pennsylvania and I went through all of the reports of the Superintendents about ten years ago.

By Mr. Rhoads:

Q. Your preceding Superintendents, you mean?

A. Yes, that is right.

By Mr. Sawyer:

Q. Did you take any action as a result of that?
[fol. 173] A. No, I did not.

Q. Did you ever promulgate, reissue this?

A. No.

Mr. Sawyer: Then I object to it as introduced. I register that objection subject to it being argued later.

Mr. Rhoads: Is that all, Henry?

Mr. Sawyer: Yes.

Mr. Rhoads: Thank you very much, Doctor.

(Signature waived.)

[fol. 174]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

Transcript of Trial of November 25, 1962

[fol. 175] Before Hon. John Biggs, Jr., Chief Judge,
Third Judicial District, Hon. C. William Kraft, Jr., District
Court Judge, Hon. William H. Kirkpatrick, District Court
Judge.

APPEARANCES

Present: Henry W. Sawyer, 3rd, Esq., and Wayland H.
Elsbree, Esq., for the plaintiffs.

C. Brewster Rhoads, Esq., Robert T. McCracken, Esq.,
Percival R. Rieder, Esq., Philip H. Ward, Esq., and Sidney
L. Wickenhaver, Esq., for the defendants.

Thomas D. McBride, Esq., Attorney General of the Com-
monwealth of Pennsylvania, Harry J. Rubin, Esq., and
Lois G. Forer, Esq., Assistant Attorneys General, for the
Commonwealth of Pennsylvania.

Third Day

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[fol. 186] Evidence on Behalf of the Defendants

MILTON EDWARD NORTHAM, having been duly sworn, was
examined and testified as follows:

Direct examination.

By Mr. Rhoads:

Q. Dr. Northam, will you keep your voice up so that all
of Their Honors can hear distinctly what you say, if you
please.

Dr. Northam, where do you live, sir?

A. At 373 Roberts Avenue in Glenside.

Q. Pennsylvania?

A. Pennsylvania.

Q. When were you born?

A. August 14, 1911.

Q. Where?

A. In Chester, Pennsylvania.

[fol. 187] Q. What is your present occupation?

A. I am principal of the Huntingdon Junior High School in Abington School District.

Q. How long have you been principal of the Huntingdon Junior High School?

A. This is my third year.

Q. Would you give us just briefly but factually your educational background and your experience in teaching or otherwise?

A. I attended the public schools of Chester, Pennsylvania, graduating from the Chester High School in 1930 with a college preparatory diploma. In September of 1930 I entered Dickinson College in Carlisle, Pennsylvania, graduated in 1934 with an AB Degree and a college provisional certificate to teach English and social studies in the public schools of Pennsylvania. From 1934 to 1938 I was employed by the Masonite Corporation of Chicago as a sales promotion representative. In 1938 I became a teacher of social studies at the Smedley Junior High School in Chester, Pennsylvania, and I taught there until 1952. In 1941 I received a Master of Science Degree in Education from the Graduate School of Education of the University of Pennsylvania. In 1952 I was employed by the Abington School District as assistant principal of the Abington Senior High School. In [fol. 188] 1955 I was appointed principal of the Abington Junior High School and in 1956 principal of the Huntingdon Junior High School.

Q. So that since roughly 1930, I believe you indicated, you have been in the school system of the Commonwealth of Pennsylvania?

A. Yes.

Q. Now, in the Abington Junior High School over which you are now principal are either of the Schempp children students in your school?

A. That is the Huntingdon Junior High School I am now principal.

Q. Huntingdon Junior High. I beg your pardon. It is in Abington Township?

A. Yes, sir, Donna and Roger Schempp are students.

Q. Dr. Northam, in the Huntingdon Junior High School it has been testified that there is a practice of Bible reading pursuant to the Act of Assembly; is that correct?

A. Yes.

Q. Could you briefly describe that practice as you observe it and have observed it in the Huntingdon Junior High School?

A. Each day at the opening of school there is a Home Room period of approximately eight minutes in which we have Bible reading, the Lord's Prayer and the salute to the flag. The Bible is read sometimes by the teachers, some- [fol. 189] times by the students.

Q. And is it read with or without comment?

A. It is read without comment, sir.

Q. Dr. Northam, do you happen to know what version of the Bible, if any, is being used in the Huntingdon Junior High School?

A. Through the School District we furnish a Bible; it is labeled the Holy Bible, the King James version.

Q. Dr. English has just presented me with a copy of a book which purports to be Holy Bible, King James Version, American Bible Society on the flyleaf; on the cover the imprint Holy Bible, and on the flyleaf the statement "The Holy Bible containing the Old and New Testaments, translated out of the original tongues and with the former translations diligently compared and revised, set forth in 1611 and commonly known as the King James version," with the imprint of the American Bible Society, instituted in the year 1816, New York, at the foot of the page. I will ask you whether that is the Bible which is in general use in the Huntingdon Junior High School, to your knowledge.

A. Yes, sir, it is.

Mr. Rhoads: I now ask that this document noted as the Holy Bible, and just referred to in colloquy with the witness, be marked for identification as Defendants' Exhibit [fol. 190] No. 2.

(A book entitled "Holy Bible, King James Version, American Bible Society," was marked Exhibit D-2 for identification.)

The Court: Admitted.

Mr. Rhoads: Thank you, sir.

By Mr. Rhoads:

Q. Dr. Northam, could you give us an estimate of the number of children in your school, Huntingdon Junior High?

A. 1,022.

Q. And since you have been principal of the Huntingdon Junior High School has that school population increased or decreased or is it about the same?

A. Since the three years of our existence it has been as high as 1,076.

Judge Kirkpatrick: You apparently are leaving the actual exercises. I was wondering—

Mr. Rhoads: Please, I am sorry, sir. I am afraid I interrupted myself. I did want to ask the doctor that. Would Your Honor be good enough to do so then?

Judge Kirkpatrick: I don't know whether you have in mind what I have but I wanted to know who selects the passages to be read, how they are selected.

The Witness: Whoever is reading the Bible, sir.

[fol. 191]

By Judge Kirkpatrick:

Q. That is a student, if it is handed to the student he can read any ten verses that he wants to?

A. It is his choice.

Q. If the teacher reads it, he or she—

A. Yes.

By Judge Biggs:

Q. Who makes the selection as to which of the pupils shall read the Bible?

A. Well, there are various techniques. Sometimes a teacher will set up a program in the room where it goes up and down the aisles of the room, other times it will be on a voluntary basis. There is no set pattern that I know of.

By Mr. Rhoads:

Q. Is there any set method by which any teacher or group of teachers selects the particular ten verses to be read every morning either by the student or the teacher?

A. None, sir.

By Judge Kirkpatrick:

Q. Does this period have a term supplied to it commonly?

A. Commonly in my own terminology I call it the Home Room Period. Once in a while we refer to it as Opening [fol. 192] Exercises, sometimes A.M. Home Room as opposed to P.M. Home Room in the afternoon.

Judge Kirkpatrick: Didn't somebody in the earlier part of the case call it something else, Devotion or—I don't remember the term.

Judge Biggs: Devotional Period.

By Judge Kirkpatrick:

Q. Wasn't there a term like that sometimes used?

A. I don't know; it could be but not in my own experience in labeling my bell schedule, and so forth. I don't recall any.

Judge Biggs: Well, the record will show it.

Judge Kirkpatrick: Yes. I had a recollection—

Mr. Rhoads: May I help to clear that up, if Your Honors please?

By Mr. Rhoads:

Q. Dr. Northam, I show you what is called "Employees' Handbook and Administrative Guide, Abington Township School District, Abington, Pa., 1956-1958." Are you familiar with that document?

A. Yes, sir.

Q. Is that a document which has been circulated to all [fol. 193] employees, teachers and superintendents in the district?

A. That's right.

Q. Now, I refer you to Page 37—

Mr. Sawyer: May I see it, Mr. Rhoads, please?

Mr. Rhoads: I beg your pardon.

(Document above referred to is handed to Mr. Sawyer.)

By Mr. Rhoads:

Q. I refer you to Page 37 of this Employees' Handbook and Administrative Guide and direct your attention to that portion which refers to "Teachers-Professional Obligations" and will ask you if you will be good enough to read No. 1 and No. 2 to Their Honors.

A. "No. 1. Comply with the state regulation in reading at least ten verses of Scripture each morning without comment. This is to be followed by the Lord's Prayer.

"No. 2. Repeat the official Flag Salute."

Q. And then there is noted the well known official flag salute; is that correct, Dr. Northam?

A. That's right.

Q. And those are directives to the teachers of the Abington School District regarding what is called "Opening Exercises;" is that correct, sir?

A. That's right, sir.

[fol. 194] Mr. Rhoads: I now ask that this document be marked for identification as Defendants' Exhibit No. 3. It will be further identified by the superintendent.

(A book entitled "Employees' Handbook and Administrative Guide of the Abington School District, Abington, Pennsylvania, 1956-1958," was marked Exhibit D-3 for identification.)

Judge Biggs: Have you any objection?

Mr. Sawyer: No, indeed, Your Honor.

Judge Biggs: All right. Let it be admitted.

By Mr. Rhoads:

Q. Dr. Northam, in the years in which you have been associated with the school system of Abington Township, and particularly within the last two and a half or three years when you have been principal of Huntingdon Junior High School, will you tell us whether you have received any personal complaint with reference to the practice of reading the portions of the Holy Bible at opening exercises.

A. I have never received any complaint.

Q. Has the practice of so reading portions of the Holy Bible been in uniform operation since you have been in Abington School District?

A. Yes, sir.

Q. Has it been so in operation since you have been in the [fol. 195] school system of the Commonwealth of Pennsylvania?

A. Yes, sir.

Mr. Rhoads: Cross-examine.

Cross examination.

By Mr. Sawyer:

Q. Dr. Northam, I invite your attention not specifically to the whole but shorter period known as the Home Room Period but to merely that portion of it in which the Bible is read and the Lord's Prayer is said. Did you not ever hear that particular portion referred to about the school as the Morning Devotions?

A. No, sir.

Q. Do you know, sir, what the origin of the directive to recite the Lord's Prayer is?

A. No, I do not know the origin.

Mr. Sawyer: No further questions.

Mr. Rhoads: If the Court will, permit me to ask one further question of the witness—

Judge Biggs: Certainly.

Redirect examination.

By Mr. Rhoads:

Q. I neglected to ask whether you have had any complaints during the time that I inquired about regarding the saying of the Lord's Prayer.
[fol. 196] A. None, sir.

Mr. Rhoads: That is all. Thank you.

Judge Biggs: Thank you, Doctor.

Mr. Rhoads: Dr. Stull.

W. EUGENE STULL, having been duly sworn, was examined and testified as follows:

Direct examination:

By Mr. Rhoads:

Q. Dr. Stull, where do you live, sir?

A. I live at 449 Abington Avenue in Glenside, Pennsylvania.

Q. How old are you?

A. Forty-three.

Q. Where were you born?

A. Zieglersville, Pennsylvania.

Q. That is Mifflin County, isn't it?

A. That is.

Q. You have been a resident of Pennsylvania all your life?

A. With the exception of two years.

Q. Will you tell us what is your educational background, if you please, briefly but as fully as you feel necessary.

A. I graduated from the high school in Milroy and from [fol. 197] Penn State University with a Bachelor's Degree in 1937. I received my Master of Education Degree from Penn State in 1942 and a Doctor of Education Degree from Temple University in 1951.

Q. When did you go into the educational system, the public school system?

A. In the fall of 1937 I began teaching in Denton, Maryland.

Q. And have you been teaching ever since except for those two years that you spoke about?

A. Those are the two years that I had reference to, sir, when I was out of state.

Q. Were you still teaching though during that time?

A. That is right.

Q. When did you come to Abington?

A. September, 1939.

Q. And in what school?

A. I came to the Abington Junior High School as a teacher of mathematics.

Q. Stayed there how long?

A. Seven years.

Q. Then went where?

A. The Roslyn Elementary School in Abington Township as principal.

Q. And stayed there for how long?

[fol. 198] A. Six years and a half.

Q. And following that what did you do?

A. Associate principal of the Abington Junior High School for one-half year.

Q. And that was in 1953?

A. Yes, the latter part of the school year '52 and '53.

Q. And from there you went to another part?

A. I assumed the principalship of that same school for the next two years.

Q. And then you went on to your present job which is principal of the Abington Senior High School; is that correct?

A. That is correct, sir.

Q. Now, in connection with your service in the Abington School District, have you become familiar with the practice of reading portions of the Holy Bible at so-called "Opening Exercises" of the school?

A. Yes, sir.

Q. Will you describe to Their Honors the character of that particular exercise, how it is done and what happens?

A. Presently?

Q. Yes, sir.

A. This is the third year we have been in our new senior high school and therefore our practice has deviated somewhat from the other schools which do not have a public [fol. 199] address system. In our school we have a class called The Radio and Television Workshop and this—

Q. Under whose supervision?

A. Under one of my teachers, a Mr. Young, who is present in the courtroom this morning.

Q. Right.

A. And this group of young people have charge of the Opening Exercises. So each morning at 8:15 they assemble in our studio and during this period the Bible is read, the

prayer is prayed, the flag is saluted and pertinent announcements to the school life are made.

Q. And that is over the public address system which is a room of its own; is that correct?

A. The studio is a room of its own but the public address system goes into every room.

Q. And, therefore, there is no general assembly presently in the Abington Senior High School at which this Bible reading, speaking the Lord's Prayer and flag salute take place?

A. No, sir.

Q. Are you familiar with the method by which the selections to be read are made?

A. Yes, sir.

Q. Could you describe it to Their Honors how that is done?

[fol. 200] A. The student who is reading the Bible on any particular morning uses his or her own passage. However, if they have no selection of their own they are free to look on any ready reference for a suggested list. But they have the entire leeway to read what they want to each morning.

By Judge Biggs:

Q. Any reference, any ready reference, what do you mean by that?

A. I mean sometimes in a roll book which is commonly used in Pennsylvania there may be something like suggested Bible readings.

By Mr. Rhoads:

Q. Will you tell us, Dr. Stull, whether the children are permitted to consult with their parents with reference to the verses which are to be read by them if they have been assigned the reading.

A. They are, sir.

Q. And do you know that of your own personal knowledge or from Mr. Young?

A. From Mr. Young.

Q. But you were advised by the person in charge of that program that that is the case; is that correct?

A. Yes, sir.

Q. Dr. Stull, will you tell us what is the present student [fol. 201] population of the Abington Senior High School?

A. I would say as of this morning about 1,830 students.

Q. And since you have been principal of that school has that population increased substantially or decreased?

A. It has increased substantially.

Q. Since 1955? is that correct?

A. Yes, sir.

Q. Will you tell us whether in your experience in the Abington School District you have at any time ever received any complaints with reference to the practice of reading portions of the Bible, as it has been described by you and others, at Opening Exercises of the schools in Abington Township?

A. I have not.

Q. Will you tell us whether you have ever received any complaint with reference to the practice of reciting the Lord's Prayer as you have described it?

A. Indirectly.

Q. Indirectly? Well, when you say "indirectly," what do you mean?

A. Through my assistant.

Q. Through your assistant?

A. Yes, sir.

Q. But not directly to yourself?

[fol. 202] A. That is right.

Q. Now, the complaint to which you referred as having come to you indirectly is the complaint which is involved in this particular case, is it not?

A. I think so.

Q. That is the Schempps. And outside of the issue which has been raised by this case in which you are now testifying, have you had any complaints with reference either to the Lord's Prayer or to the reading of the Bible?

A. None whatsoever.

Q. Would you know of your own knowledge, Dr. Stull, how the children are selected to read the Bible or would that be under Mr.—

A. I think Mr. Young could probably explain that better than I.

Mr. Rhoads: Thank you. That is all. Cross-examine.

Cross examination.

By Mr. Sawyer:

Q. Dr. Stull, was it your understanding that the complaint to which you referred was only directed to the Lord's Prayer?

A. It was, sir.

Q. And it was your understanding that it was not concerned with the Bible reading?

[fol. 203] A. I had no knowledge that it was concerned at all with the Bible reading.

Q. This roll book that you mentioned, Doctor, could you tell me a little bit more about that? What book is that and by whom is it published?

A. I can't tell the publisher but I believe we have a copy.

Q. Is it a book that comes to you through the School District of Abington or from the State Superintendent of Public Instruction? I just don't—

A. From the usual supplier of educational articles. In other words, the state does not issue us roll books.

Q. Now, this roll book is a purchase which is made by your school or by you— Who procures this roll book?

A. I assume the business manager of the district.

Q. The business manager of the district. And this roll book you say has in it suggested Bible readings?

A. I have seen roll books with suggested Bible readings in them, yes, sir.

Q. Are you familiar with the roll book that is used in your school?

A. A roll book is not used for assignments, sir. The students have leeway to choose whatever they want to choose. But I would say that I assume these roll books are [fol. 204] available if they do not know what to read.

Q. I can see I am not clear just what it is. Is this a book that is used by the faculty or by the students?

A. The faculty.

Q. By the faculty?

A. Yes.

Q. Now, with regard to that, is there a uniform roll book that is used by the faculty in your high school?

A. Yes.

Q. They all use the same book?

A. In any particular year, sir.

Q. In any particular year. And you mentioned to us that this roll book has in it suggested Bible readings?

A. I believe so, yes, sir.

Q. Do you know under whose aegis those selections are made?

A. I do not.

Q. Do you know whether they reflect the particular times of the year? Would there be passages at Christmas time?

A. I am not sure.

Q. Well, I wonder if you could procure such a book for us to examine. Could you, Doctor?

A. I could.

Judge Biggs: Is there one in the courtroom?

[fol. 205] Mr. Rhoads: I don't know. This is the first time that I have heard about the roll book but if there is one in the courtroom we shall produce it.

I will get it for you right now, sir.

Judge Biggs: Thank you.

By Judge Biggs:

Q. Are the names of the pupils kept in it; is that why it is called the roll book?

A. Yes.

Q. And what else does it have in it?

A. That is all there is. There are blanks.

Q. Blanks for their names. Is there a calendar in it? I assume there is. Is there a calendar in it?

A. Yes, sir, I believe so.

Mr. Rhoads: May I just produce this?

I am producing, sir, from the kit of Mr. Young, who will testify shortly, what purports to be "Squibb's Class Record

Book No. 9, W. W. Young, Teacher," on the first leaf of which I find "Suggested Scripture Selections for use in Public Schools."

Judge Biggs: Suppose we have it marked for identification and then if Mr. Young is to testify about it perhaps it might be more desirable.

Mr. Rhoads: Yes.

[fol. 206] Mr. Sawyer: Who shall mark it?

Judge Biggs: Let it be marked.

Mr. Rhoads: I will mark it myself.

(A book entitled "Squibb's Class Record Book No. 9 W. W. Young, Teacher," was marked Exhibit D-4 for identification.)

By Mr. Sawyer:

Q. Dr. Stull, I am sure you have seen this before, but showing you D-4, could you then read to us by whom that book is published?

A. Alva M. Squibb, 918 Park Street, McKeesport, Pennsylvania.

Q. And this is a private printer and publisher to your knowledge, is it, Mr. Stull?

A. To the best of my knowledge it is.

Q. And there is nothing in that book that has any official imprint of the State of Pennsylvania or the particular township in which your school is located; is that correct?

A. No.

Mr. Sawyer: No further questions.

Mr. Rhoads: That is all. Thank you.

Judge Biggs: Thank you, Doctor.

Mr. Rhoads: Mr. Young.

[fol. 207] WILLIAM WINSTON YOUNG, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Rhoads:

Q. Mr. Young, where do you live?

A. 697 Seimbrook Court, Trevoze, Pennsylvania.

Q. How old are you?

A. Thirty.

Q. What is your present occupation?

A. School teacher.

Q. Where?

A. At Abington Senior High School.

Q. How long have you been teaching at the Abington Senior High School?

A. Since September of 1955.

Q. What is the nature of your teaching activity?

A. English.

Q. What is your general educational background, sir?

A. I graduated from Frankford High School in Philadelphia in 1946, and from there I went to the University of Pennsylvania from which I got my Bachelor's Degree in 1950, and then I got my Master's Degree in Education in 1951.

Q. When did you start teaching?

A. In September of 1951.

[fol. 208] Q. And you have been teaching ever since?

A. That's right.

Q. And in addition to your work as a teacher in English in the Abington School System, do you have any other activities which have been assigned to you?

A. Yes. I sponsor the yearbook, I sponsor the Honor Society, I sponsor the junior class, and in connection with my course in radio and television I am in charge of the morning program that has been referred to before.

Q. Will you just describe to Their Honors exactly what you mean by the "morning program."

A. As Dr. Stull outlines, between 8:15 and 8:30 in the morning, while the students are in their home rooms or

advisory sections, over the public address system we have a morning program which includes the Bible reading, the Lord's Prayer, the flag salute and the announcements for that particular day.

Q. Is that part of the teaching program of the school with reference to the occupation of television and radio work?

A. That's right. The personnel of this morning program are drawn from the courses in radio and television that I teach.

Q. Yes. Now, directing your testimony specifically to the question of Bible reading and the saying of the Lord's [fol. 209] Prayer, will you tell us just exactly what takes place in your radio and television room in the mornings at the opening exercise.

A. The student sitting at a table with the microphone announces the Bible, the part of the Bible that he is going to read, and then he proceeds to read that, after which he asks the students in the rooms to stand and join in the Lord's Prayer. He begins that and they follow in their Home Rooms. And then a second student leads the salute to the flag thereafter.

Q. How are those students who give the Bible reading in the morning selected?

A. They are assigned so that every student taking the course will during the term of the course have several opportunities to perform each part of the morning program.

Q. That is the reading of the Bible as you have described?

A. That's right. One student reads the Bible, another does the flag salute and the third reads the announcements.

Q. And is any specific Bible directed to be read, that is as far as the relation between the school and the scholar is concerned?

A. No. The Bibles available in the school are the King James version; however, my direction is that the student practice whatever selection he has taken from the Bible that he has in his home. He knows in advance that he is going to [fol. 210] do this so he prepares it. And generally they use the Bible that they are familiar with in their home.

Q. And use it by what, bringing it to school?

A. They bring it with them that day, generally speaking.

Q. Have you had any experience to your own personal knowledge of children reading their own Bibles, bringing them from home and reading them, reading the selected verses from the Bible in the morning?

A. Yes. Regularly, as long as we have been doing this over the past three years, we have had Jewish students bring in the Bibles from their homes, Catholic students bring in their own, and sometimes those who read the King James version bring their own in, other times they use the one that is available there.

Q. Did you bring with you any Bibles to illustrate the point that you are making, that other than the King James version have been used?

A. Yes. "In my briefcase I have all four that we have used.

Q. May I hand you your briefcase, Mr. Young, and let you select from that the documents to which you are referring?

A. This is the King James version that is available in the school.

Mr. Rhoads: Identified as Defendants' Exhibit No. 5.

[fol. 211] (A book entitled "The Holy Bible, Containing the Old and New Testaments," was marked Exhibit D-5 for identification.)

The Witness: This is the Catholic version of the Bible that has been used on occasion by one of the students in the course.

By Mr. Rhoads:

Q. Do you know the name of the student?

A. Yes, Frank McLaughlin.

Q. And is that his Bible?

A. It is.

Q. And you have brought it into court with his permission?

A. That's right.

Mr. Rhoads: I ask that that be marked for identification.

(A book entitled "The Holy Bible, Translated from the Latin Vulgate," was marked Exhibit D-6 for identification.)

Judge Biggs: How is that Bible named on its title page?

Mr. Rhoads: It is designated on the flyleaf, sir, "The Holy Bible, Translated from the Latin Vulgate, Diligently Compared with the Hebrew, Greek, and Other Editions in Diverse Languages, the Old Testament First Published by [fol. 212] the English College at Douay, A. D. 1609 and the New Testament First Published by the English College at Rheims, A. D. 1582, with Annotations, References, and an Historical and Chronological Table," and then I don't think you are interested, sir, in what is at the bottom of the page.

Judge Biggs: No. I merely wanted it so that we would have no difficulty in identifying it.

Mr. Rhoads: And with a cross imprinted on the cover, if Your Honors please.

The Witness: The third one is The Holy Scriptures, and this is an actual Bible that has been brought in by Jewish students. This belongs to Linda Bruner.

By Judge Biggs:

~~Q. And has been used?~~

A. Yes, it has, sir.

By Mr. Rhoads:

Q. And is she a Jewish scholar?

A. Yes, she is.

Q. Is the McLaughlin boy a Catholic student?

A. Yes, he is.

Q. Is this Bible now which we will identify as Defendants' Exhibit 7 the property of the little girl Linda Bruner?

[fol. 213] A. Yes, it is.

Q. And did you bring it in with her permission?

A. Yes, I have.

Mr. Rhoads: And for Your Honors' information, Linda Bruner is written in the flyleaf.

Judge Biggs: That sufficiently identifies it.

Mr. Rhoads: And the title is a Jewish inscription at the top, which I would not venture to translate, sir, then underneath that "The Holy Scriptures According to Masoretic Text, a New Translation, with the Aid of Previous Versions and with Constant Consultation of Jewish Authorities," at the bottom "Philadelphia, The Jewish Publication Society of America, 5715-1955."

(A book entitled "The Holy Scriptures According to the Masoretic Text, a New Translation," was marked Exhibit D-7 for identification.)

The Witness: I have one more. The Revised Standard Version has also been used on occasion.

Mr. Rhoads: The witness is now producing what purports to be a volume "Holy Bible," Revised Standard Edition, published by Thomas Nelson and Sons, New York, Toronto, Edinburgh, 1952. Would Your Honor like the inscription also?

[fol. 214] Judge Biggs: I think it is sufficiently identified.

(A book entitled "The Holy Bible, Revised Standard Version, Containing the Old and New Testaments," was marked Exhibit D-8 for identification.)

By Mr. Rhoads:

Q. Mr. Young, can you inform the Court as to how the selections which are read—

Judge Biggs: Do you offer these in evidence?

Mr. Rhoads: I offer them in evidence. I might as well offer them now, sir. I do.

Judge Biggs: Any objection?

Mr. Sawyer: No, sir.

Judge Biggs: Admitted.

By Mr. Rhoads:

Q. Can you give Their Honors some information as to how these verses which are read in the morning are actually selected?

A. I inform the students that they are to read ten verses and the verses they read are up to them. However, I have made available the list that is in my roll book, if they wish to select from that.

Q. And do they select from that, according to your own experience, or not?

[fol. 215] A. Sometimes they do. I would say, at least half the time they take the suggestion from this.

Q. From what?

A. From the list in the roll book.

Q. From the list in the roll book?

A. That is correct.

Q. Will you tell us something about the roll book that you have there. Is that an official document of the School District of Abington Township? What is it?

A. Yes, this is a roll book that was issued by, in my case, the head of the English Department.

Q. And what is the function of the roll book, just so we may understand it?

A. To keep a record of the students' grades throughout the year.

Q. And it so happens that in the flyleaf there are these suggested readings; is that correct?

A. Yes, that is correct, sir.

By Judge Biggs:

Q. Can each student look for his or her grade by examining the roll book?

A. No, they don't look at the rest of the book, they just look at this introduction if I happen to have that with me. But I take the liberty of clipping these suggestions from [fol. 216] two other roll books so that I have one available in the studio where the Bible is read and also one available in the room in which I teach. They generally look at those rather than the actual one in the roll book.

By Mr. Rhoads:

Q. And are they posted or hung in some conspicuous place, is that it, or how do the students get at it?

A. In both places they are on the bulletin board. I be

lieve, along with the schedule of who is to be on that morning program.

By Judge Kirkpatrick:

Q. Do the students get it the day before?

A. No, they are selected more in advance of that, generally a month in advance.

By Mr. Rhoads:

Q. And is it part of your curriculum that they practice their readings before they actually go on the air, if that be the expression?

A. Yes, that is why I select them well in advance, so that they will have an opportunity of rehearsing this at home—usually they do before their parents—and then in the morning they get in before the program goes on so that I may hear their reading to help them with pronunciation, if such difficulties arise before they are actually on the [fol. 217] P.A. system.

Q. Mr. Young, during your experience in the Abington School System have you had any objection raised to you with reference to the reading, as you have described it, of the selections from the Bible in the morning or the saying of the Lord's Prayer?

A. No, sir, none at all.

Mr. Rhoads: You may cross-examine.

Judge Biggs: Before you commence your cross-examination—

By Judge Biggs:

Q. How many students in the course of the term would read from the Bible?

A. There are thirty in this course, in the Radio and Television Workshop course, and all of them have an opportunity several times a year to read the Bible.

Q. And also to say the Lord's Prayer?

A. Yes. The same student who reads the Bible leads the Lord's Prayer that day.

Q. You say it goes over the public address system and

the other students in the school follow the Lord's Prayer.
That is follow orally—

A. Yes.

Q. —the recitation and recite it themselves?

[fol. 218] A. That's right.

Q. Just as they would with the flag salute?

A. That is correct, sir.

Q. How many terms are there?

A. How many terms?

Q. Terms in a school year?

A. Two.

Q. And each student of these thirty would do this work, you say, several times a year. Two or three times a year, do you mean?

A. More than two. I would say probably between three and five in that they would be on the morning program more times than that but they may get around to the Bible, some time, a number of times between three and five. The course runs for a full year, two terms.

Q. What about the student that gives the summary of the school's activities or pertinent notices, is he the same student?

A. No, it is a different person for each function; one for the Bible, one for the flag salute and one for the announcements.

Q. One for the Bible and the recital of the Lord's Prayer?

A. Yes.

Q. One for the flag salute and one for the announcements?

[fol. 219] A. That is correct.

Q. How do you select—you have a list of students, a roster of students that are in this course of yours. How is the first person chosen, how is the second person chosen, and so on?

A. Well, during the first week of the course, for the first couple of days in school I have auditions and tape record their voices to find out who would be best suited for the various parts, and then I assign the students parts that would be most in accordance with their ability. That is the announcements are the most difficult part, so the student who early in the year proves that he has ability in reading

things quickly and well gets the announcements, and the flag salute and the introduction, which are the easiest part of the program, would be assigned to students who have not had as much experience.

Q. You say "the introduction." What is "the introduction"?

A. The programs are numbered. At the beginning of each program we give the number and generally we have a fact, a well known fact for the day that we look up in the Almanac.

Q. And that forms part of the introduction?

A. That is the introduction.

Q. And who does that, what student does that?

A. The same student who does the flag salute.

[fol. 220] Q. The flag salute comes first?

A. No, the student who is doing that part gives the introduction and then the Bible and the Lord's Prayer follow, and then the flag salute.

Q. And then he comes back for the flag salute?

A. That's right. He also concludes the program by stating who has been on it that morning.

Q. You say you tape their voices, hear them, and then you select someone for the announcement who really is able to read quickly and well and make a proper announcement?

A. Yes, that is correct.

Q. Well, is this done alphabetically or you simply take the best man that you can find for the first day, or how do you do it?

A. It is according to ability and that follows through during the year. Of course, some of them that are not particularly good at this sort of thing in the beginning improve as the year goes by, and then they do announcements when they have improved.

Q. When you have selected your first man you gave the announcements to this year, how did you select him, the very first one in September?

A. Some of these students have taken the course a second year. You may follow through with the second year, [fol. 221] so I picked the ones whom I knew that I had had the year before.

Q. How did you pick the very first man who spoke this year on announcements?

A. He was a student whom I have had last year.

Q. Well, how did you pick him? Why did you pick him?

A. Because I knew that he would be able to do the announcements well.

Q. You considered him the best suited man in the entire group; is that correct?

A. That is.

Q. And then you went down the list according to varying abilities?

A. That is right, according to the results that I observed from the tape that I made.

Q. In other words, it wasn't done alphabetically or according to standing in the class or anything of that sort?

A. No, it wasn't. They had no standing in the class at that time.

Q. You did it on the basis of who you thought was best suited at the time?

A. Yes, that is correct.

Judge Biggs: Thank you.

By Judge Kraft:

[Vol. 222] Q. How did you do it after the first couple of weeks so that other students were afforded, as you said, three or four opportunities during the year?

A. Well, after I have heard other students do the Bible and the introductory part and the flag salute, then subsequently they are given the announcements that are the more difficult part. As they strengthen they get the more difficult part of the program.

By Judge Biggs:

Q. In other words, it is done on the basis of who in your judgment is best suited to deliver the various parts of the program orally over the microphone?

A. To a degree that is correct, although even if a student is extremely well suited to a particular part I can't assign

him that part regularly because I want everyone to have a chance.

Q. Yes, but subject to that condition?

A. Yes, that is correct.

By Mr. Rhoads:

Q. And, Mr. Young, this is all part of the educational equipment which is being given to the students in Abington Senior High School; is that correct?

A. Yes, sir, that is correct.

Q. And it is part of the curriculum which you were developing in the radio and television phase of your English course; is that correct?

A. Yes, that is correct.

Mr. Rhoads: That is all. Thank you.

Cross examination.

By Mr. Sawyer:

Q. Mr. Young, when you say you wanted to give them all a chance, I take it that you refer to all of the students who are enrolled in your class in the radio and television?

A. Yes, sir, that is right.

Q. And did you tell us how many of those students there were? How many are there enrolled in that class?

A. There are thirty this year.

Q. And is that about the average number of students in recent prior years in the past?

A. Yes, over the past three years there has been an average, a little, I would say an average of a little less than thirty.

Q. So that these arrangements and the judgments that you make with respect to who will make announcements or who will read the Bible and who will lead in the flag salute are judgments that you make within this particular class of radio and television students.

A. Yes, sir, that is correct.

Q. When was it that you commenced that particular part

[fol. 224] of your whole job at Abington? When did you first take that over, the radio and television?

A: When we moved into the building we now occupy, in September of 1956.

Q: September of 1956?

A: Yes, sir.

Q: And prior to that time I take it that this, what you have told us, did not apply because you had no public address system?

A: Prior to that time the Bible was read in the manner that Mr. Northam had outlined.

Q: And do you recall when it was after September, 1956, that you first had occasion to read other than the King James version, which you actually have at the school?

A: I would guess that it was quite early in that year, in that school year.

Q: What Bible was it on the first occasion, and how did it come about?

A: As soon as assignments were made people brought in their own Bibles, and I know that I had a number of Jewish students that year who brought their own in quite early in the year, I would say by October at the latest.

Q: Of 1956?

A: Yes, sir.

[fol. 225] Q: And had there been any policy set as to whether the children would be permitted to bring in their own Bibles, and if so by whom was it set?

A: There was no policy other than what I set, and I suggested they rehearse on the Bible that they have at home, which, of course, would result in various versions.

Q: So that your knowledge of this concept of having them practice at home was one which was initiated and really originated by you in your own class; is that correct?

Mr. Rhoads: That is not his testimony.

Mr. Sawyer: Well, let's find out what his testimony is.

Mr. Rhoads: You are putting words in his mouth.

Judge Biggs: Suppose you reframe the question. I think your intent is entirely candid but I do think it is not quite what he said. Let's see what he will say on that point.

Mr. Sawyer: I will ask the stenographer to read the preceding question and the answer. Perhaps I don't need to ask the following question.

(The reporter read as follows: .

"Q. And had there been any policy set as to whether the children would be permitted to bring in their own Bibles, [fol. 226] and if so by whom was it set?

"A. There was no policy other than what I set, and I suggested they rehearse on the Bible that they have at home, which, of course, would result in various versions.

"Q. So that your knowledge of this concept of having them practice at home was one which was initiated and really originated by you in your own class; is that correct?"

Mr. Sawyer: If that is not correct I submit, sir, the witness can correct my question, but I thought that clearly stated what he had said.

Judge Biggs: I think it is a proper question in cross-examination.

Mr. Rhoads: I will withdraw my objection, sir.

The Witness: That my policy initiated this procedure within my class, since the beginning of the Radio and Television Workshop. I don't know what policy had occurred before that.

By Mr. Sawyer:

Q. Well, there wasn't any Radio and Television Workshop that read the Bible over the public address system until you [fol. 227] had a public address system; is that correct?

A. That is correct.

Q. And that practice started as soon as you moved into the new building with the public address system?

A. That is correct.

Q. And shortly thereafter on your suggestion the children were to practice the verses at home, and that led to their bringing their own Bibles in; is that correct?

A. Yes.

Q. And were you then the originator of that policy?

Mr. Rhoads: May we suggest "Were you the originator of that practice," and I have not the slightest objection.

Judge Biggs: Well, Mr. Sawyer wants to use the word "policy." I think he is at liberty to do so.

Mr. Sawyer: I didn't realize the objection was to "policy."

Judge Biggs: I think "policy" is a very large word under the circumstances.

Mr. Sawyer: Practice.

Mr. Rhoads: That was my point that it is so large and inclusive.

By Mr. Sawyer:

Q. What I am trying to get at, Mr. Young, is that you [fol. 228] weren't directed by your principal or anyone else in the school district to carry out that practice?

A. No, I wasn't. I initiated it in connection with these students.

Mr. Sawyer: I have no further questions.

Mr. Rhoads: That is all, Mr. Young.

By Judge Biggs:

Q. Just one other question. You stated that prior to the inauguration of the public address system the students read the ten verses. Did they also at that time say the Lord's Prayer?

A. Yes, sir, they did.

Judge Biggs: Thank you.

Mr. Sawyer: Your Honors, I would like to bring Your Honors' attention and ask Mr. Rhoads if he wants to amend his answer stated that he admitted that the King James version of the Bible was read in accordance with the way we pled it, and that it was read by a student or teacher over a public address system which was broadcast to all classrooms.

Mr. Rhoads: I don't know whether it really makes very much difference, sir, because the question of proofs always goes beyond the question of the answer.

[fol. 229] Judge Biggs: The Court made no order under Rule 16 pre-trial.

Mr. Rhoads: That was my impression.

Judge Biggs: I assume that counsel would move that

the allegations correspond to the proof, which he is at liberty to do under the civil rules, and I think the Court will so treat it. Agreeable?

Mr. Rhoads: Because in point of fact, sir, I might very candidly suggest that at the time I prepared the answer the information which I put in the answer was what I thought was all-inclusive. I find, however, that we are dealing with educational practices which I want to bring out in the testimony, and I have done so.

Judge Biggs: Is that satisfactory to you, Mr. Sawyer?

Mr. Sawyer: Yes, sir.

Judge Biggs: Thank you.

Mr. Rhoads: Thank you.

Dr. English, please.

ORLANDO H. ENGLISH, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Rhoads:

[fol. 230] Q. Dr. English, where do you live, sir?

A. 1409 Highland Avenue, Abington, Pennsylvania.

Q. What is your present occupation?

A. Superintendent of Schools of Abington Township School District.

Q. For how long have you been superintendent of schools of Abington Township School District?

A. Since August 1, 1950.

Q. Dr. English, will you be good enough to give Their Honors a resume of your educational background and professional experience?

A. I attended the public schools at Camptown, Pennsylvania, and graduated from high school there. Following graduation from high school I attended the Mansfield State Normal School from 1922 to 1925, and then in 1929 I received my Bachelor of Science Degree in Education from the University of Pittsburgh. In 1932 I received the Master of Arts Degree in Educational Administration from the

University of Pittsburgh, and in 1942 Doctor of Education in Education from the University of Pittsburgh.

Q. Dr. English, when did you start or commence your professional teaching?

Judge Biggs: Just a moment. I think we will take a recess for approximately ten minutes. We will reconvene [fol. 231] at 11:25.

(Recessed at 11:15 a. m. until 11:25 a. m.)

Mr. Rhoads: I recall the witness.

Judge Biggs: Yes, please, Doctor, would you resume the stand.

ORLANDO H. ENGLISH, resumed.

By Mr. Rhoads:

Q. Dr. English, when did you start your career in the public school system?

A. I began teaching at the Ambridge Junior High School in 1925, was teacher of mathematics and science, and remained in Ambridge, Pennsylvania—

Judge Biggs: Will you keep your voice up a little bit, please, Doctor.

The Witness: —and remained in Ambridge, Pennsylvania, from 1928 to 1933 as elementary principal. In 1933 I went to West Deer Township in Allegheny County as supervising principal, and then in 1936 moved to Freeport Borough Schools as supervising principal; in 1940 I went to Brentwood, Pennsylvania, as superintendent of schools; in 1946 elected superintendent of schools at Uniontown in Fayette County, and I came to Abington in 1950 as superintendent of schools. [fol. 232]

By Judge Biggs:

Q. Did I understand you to say that one of the early schools at which you taught was in West Deer?

A. West Deer Township.

Q. — West Deer Township?

A. In Allegheny County.

Judge Biggs: Thank you.

By Mr. Rhoads:

Q. And you have been superintendent of schools of Abington Township since 1950?

A. Correct.

Q. Are you a member of any other professional associations or bodies connected with education?

A. A member of the National Educational Association, the Pennsylvania Educational Association.

Q. What is the National Educational Association?

A. It is a national professional organization of the teaching profession.

Q. And what is the other one?

A. I am also a member of the American Association of School Administrators, the National Association of Educational Research and the National Fraternity of Phi Delta Kappa and also at the present time I am a member of the [fol. 233] State Council of Education of the Commonwealth of Pennsylvania.

Q. Dr. English, are you familiar with the practice of Bible reading in the schools of Abington Township?

A. I am.

Q. And since you have been superintendent of schools has that practice of Bible reading pursuant to the Act of Assembly been a constant practice in the school system?

A. It has.

Q. Can you describe to Their Honors from your point of view as administrative head of the school system what is the practice that is approved by the school system represented by you?

A. In accordance with the Administrative Handbook that was submitted earlier, the directions in the Handbook to all professional employees that in accordance with the laws they are to read ten verses of the Bible without comment, followed by the Lord's Prayer and flag salute, and from a review of the principals of the various schools

it is my understanding that the policy is followed in all the schools.

Q. Of the Commonwealth?

A. In Abington and in all schools that I have been connected with it's been followed, in all previous—

Q. I wasn't clear whether you meant in all schools of the [fol. 234] Commonwealth or in all schools of Abington Township.

A. In all schools in Abington Township.

Q. And so far as your association with the school system of the Commonwealth is concerned, it has been followed to your personal knowledge during the time that you have been associated with the Commonwealth's school system; is that right?

A. It has been the policy in all previous school districts which I have been associated with.

Q. Dr. English, what is the student population of the Abington School District?

A. 9,033.

Q. Has that increased or decreased as a general proposition since the time you have been there, that is 1950?

A. 1950 was 4,700.

Q. And now it is some—

A. 9,033.

Q. During all of that time had you as the administrative head of the Abington School System received any complaints regarding the practice of reading ten verses of the Bible at opening exercises without comment or reciting the Lord's Prayer, as has been described?

A. I have received none.

Q. Dr. English, I show you Defendants' Exhibit No. 3, [fol. 235] being an "Employees' Handbook and Administrative Guide," and ask you whether that has been issued pursuant to your own authority as superintendent of schools of Abington Township?

A. It is issued as an administrative handbook from my office.

Q. On Page 37 under the heading of "Teachers-Obligations," "Opening Exercises," is that rule or regulation that is promulgated on Page 37 part of the administrative policy of the school district?

A. It is.

Q. Now, I show you Defendants' Exhibit No. 2, being a King James version of the Holy Bible, published by the American Bible Society, and ask you whether that is the copy of the Holy Bible which has been circulated in the schools of Abington Township for purposes of reading?

A. It is the issue that is purchased by the school district and issued to all teachers to comply with the school laws.

By Judge Biggs:

Q. Issued to all teachers?

A. To all Home Room teachers.

Q. All the professional employees?

A. Yes.

By Mr. Rhoads:

Q. By that you mean those who would be using it, is that [fol. 236] correct, Dr. English?

A. That is correct.

Q. In other words, it wouldn't be issued to a stenographer in your office?

Judge Biggs: I didn't mean that.

Mr. Rhoads: I beg your pardon, I wasn't quite sure what the doctor meant myself.

The Witness: To Home Room teachers.

By Judge Biggs:

Q. To the Home Room teachers throughout the Township in the schools?

A. That is correct.

Mr. Rhoads: You may cross-examine.

Cross examination.

By Mr. Sawyer:

Q. Dr. English—excuse me, I would like to look at that.

(Exhibit D-2 is handed to counsel.)

Mr. Sawyer: Thank you.

By Mr. Sawyer:

Q. Dr. English, has there ever been any other Bible other than that King James version there, purchased by Abington Township?

A. A check with the business office reveals that is the one that has been purchased.

[fol. 237] Q. And does that check also reveal that no other version of the Bible has been purchased?

A. According to the records that is the Bible that has been purchased.

Mr. Rhoads: I think that I may be able to stipulate with my friend that, so far as any information that we have or investigation that we have been able to make, D-2 is the only Bible involving the use of any public funds of Abington Township.

Judge Biggs: Do you accept the stipulation, Mr. Sawyer?

Mr. Sawyer: Yes, sir.

Mr. Rhoads: I simply want to make it perfectly clear, sir, so far as we know, that is, D-2 is the Bible.

Judge Biggs: The Court understands that the stipulation between counsel is that this No. D-2 is the Bible which is issued and the only Bible which has been used in so far as the superintendent is concerned.

Mr. Rhoads: Yes, sir.

By Judge Kirkpatrick:

Q. Were you familiar with the practice that one of the witnesses testified to of the students of varying faiths reading the Holy Bible of their own faith?

[fol. 238] A. I am aware of it.

Q. That is you were aware while it was going on?

A. No.

Q. Or did you just learn of it?

Q. I just learned of it at the beginning of this information.

Judge Biggs: At the beginning of this session.

By Judge Kirkpatrick:

Q. Would you be in a position to regulate that feature of the matter? Could you issue a direction to the teachers either to do it or not to do it, as you saw fit?

A. Do you mean—

Q. I mean does your position carry with it the authority to say to the teacher, you can't read anything except the King James version?

A. I question whether that is under my jurisdiction.

Q. That is what I wanted to find out.

A. Because I would only make the directive in accordance with the school law which says, "Read ten verses of the Holy Bible."

Q. But you would be the one to make the directive if there was one to be made?

[fol. 339] A. Yes.

By Judge Kraft:

Q. Do you determine what version is purchased by the school district or is that determination made by the Board of School Directors?

A. I imagine it is made by the business office and through the supply houses that supply our books of that nature.

By Judge Biggs:

Q. You say you imagine, you mean you think that is the way it is done?

A. That's right.

Q. But you are not certain about it. You don't really know.

A. No one has asked me. The Holy Bible has always been—

Q. Always been forthcoming?

A. —forthcoming, and I have asked no questions.

By Judge Kirkpatrick:

Q. Do you think that the Jewish Bible is in accordance with the directive to read the Holy Bible, in your opinion?

A. I never have questioned it.

Q. You never considered it or you have never doubted it, which do you mean?

[fol. 240] A. Never considered it.

Judge Kirkpatrick: Never considered it.

By Mr. Sawyer:

Q. I believe you have before you there, resting on the edge of the witness stand rail, the book which has been referred to here as "The Roll Book," is that correct, sir? I think you are looking at it now.

A. Yes.

Q. That is the roll book, isn't it?

A. Yes.

Q. Is that purchased under your direction or supervision, that particular publication?

A. It is a publication purchased by the school district.

Q. Well, are you the person who selects that particular roll book?

A. Frankly, I have never seen it before.

Q. You have not seen it before?

A. I knew there were roll books in the school system, but the nature of the book I have never checked.

Q. Who would it be, sir, that would make the decision as to whether that roll book published by that particular firm there in Pennsylvania or somebody else's roll book would be purchased?

[fol. 241] A. I would say it would be the business office.

Q. The business office of the—

A. —of the school district.

Q. —of the school district. That office would be a portion of your general supervision?

A. That is correct.

Judge Kraft: Mr. Sawyer, is it your contention that if this was purchased by the school district, that it was so purchased with a direction to include in it selected Bible excerpts?

Mr. Sawyer: I don't know, sir.

Judge Kraft: Or is it your view that they just ordered roll books and found on delivery that they gratuitously

included a calendar form and suggested excerpts of Bible reading?

Mr. Sawyer: That is what I don't know; that is what I am asking. I am like the superintendent of schools of Abington Township. I never saw a roll book before either, nor did I know that it had suggested texts in it, so I was really inquiring. I at this moment have no theory about it. I might have some theory about it later on in the case when I give it some thought, but I don't have any.

By Judge Biggs:

[fol. 242] Q. Could I inquire a little bit about your setup? You are the superintendent of the district?

A. That is correct.

Q. You have an office.

A. That is correct.

Q. Where is that office?

A. In the Administration Building.

Q. Where is that?

A. 1841 Susquehanna Road—Susquehanna Street.

Q. In the Township?

A. Correct.

Q. Now, your duties include general supervision?

A. Of the complete, entire school system.

Q. And you have an officer who acts as a procurement officer?

A. I do.

Q. Who is he?

A. Dr. Henry Daum.

Q. And he, for example, procured this roll book?

A. That is correct.

Q. Does he procure other supplies?

A. He does.

Q. And his duties are devoted exclusively to the business of procurement or does he have other professional duties?

[fol. 243] A. He serves as the secretary of the Board of School Directors and Business Manager of the school system.

Judge Biggs: Thank you.

By Mr. Sawyer:

Q. Dr. English, was it under your direction that in the preparation of the blue book which was referred to that the directive to read the Lord's Prayer or, excuse me, to recite the Lord's Prayer was also included in that little section?

A. That is correct. In fact, that is the same paragraph that I have used for thirty years.

Q. And do you know how you first came to add to the statutory requirement of the Bible reading the additional recitation of the Lord's Prayer?

A. I copied the same paragraph from the administrative handbook of my former superintendent.

Mr. Sawyer: Thank you very much, sir. No further questions.

Mr. Rhoads: That is all, Doctor.

Judge Biggs: Thank you, Doctor.

Mr. Rhoads: May I recall Mr. Young just for one question, sir?

Judge Biggs: You may.

Mr. Rhoads: Thank you.

[fol. 244] WILLIAM WINSTON YOUNG, resumed.

Redirect examination.

By Mr. Rhoads:

Q. Mr. Young, in your examination of a few moments ago you testified that there were about thirty students in your course; is that correct?

A. Yes, sir, it is.

Q. Will you tell us why there is such a small number of students in your course?

A. It is an elective course that comes under the heading of the English Department.

Q. And these thirty students have the privilege of electing your course; is that correct?

A. Yes, that is correct. They must take it in addition to their regular English.

Mr. Rhoads: Thank you. That is all.

Mr. Sawyer: No questions.

Mr. Rhoads: Just a minute.

Judge Biggs: Just a moment, please.

Mr. Rhoads: Thank you. That is all.

Judge Biggs: Thank you, Mr. Young.

[fol. 245] Mr. Rhoads: If Your Honors please, I am in somewhat of a predicament and place myself at Your Honors' disposal. Our next witness is Dr. Luther P. Weigle, who is Dean Emeritus of the Yale Divinity School. He is presently on his way to Philadelphia. We expected him to be here about 12 o'clock noon. I anticipated that I would have Dr. Boehm, Superintendent of Public Instruction, as a preceding witness and Dr. Weigle factually. I do not think he will be here possibly before half past twelve. I am therefore, wondering, sir, whether Your Honors could see fit to adjourn and then let us reconvene when Dr. Weigle arrives. His train is the 8:30 train from New Haven and we have somebody out meeting him now.

Judge Kirkpatrick: Is he your last witness?

Mr. Rhoads: We have Dr. Boehm, who unfortunately could not make it today but will be here tomorrow morning and he will be but ten or fifteen minutes I am sure.

Judge Kirkpatrick: May I ask another question? Is Dr. Weigle an expert witness as the Jewish scholar—I have forgotten his name.

Mr. Rhoads: Yes, Dr. Grayzel. Dr. Weigle will be testifying upon purely scholarship lines, the same general lines.

Judge Biggs: That would mean a session tomorrow [fol. 246] morning, obviously.

Mr. Rhoads: I would hope, if Your Honors please, that if we convened at say—with Dr. Boehm, yes, sir. But I would hope that if we convened at say two o'clock, that Dr. Weigle's testimony should be completed within an hour or an hour and a half I am quite confident, and I am trying to limit it and bring it to focus.

Judge Biggs: Then we will have to go over until tomorrow morning.

Mr. Rhoads: Yes, sir.

If Your Honors please, I was under the impression that Your Honors fixed today and tomorrow, did you not, sir?

Judge Biggs: Yes, we did.

Mr. Rhoads: I hoped I had not trespassed on—

Judge Biggs: No. There had been other special circumstances which developed over which you had no control. How long would Dr. Boehm take?

Mr. Rhoads: Not more than ten or fifteen minutes at the outside, sir.

Mr. Sawyer: We might be able to stipulate, sir. He is the Superintendent of Public Instruction of the Commonwealth. [fol. 247] Mr. Rhoads tells me, and I would rather think that when Mr. Rhoads says ten or fifteen minutes, they would be matters which we probably could stipulate.

Mr. Rhoads: I wouldn't be surprised, sir, that we might be able between now and reconvening be able to stipulate.

Judge Biggs: Suppose you see if you can. It would be a great convenience. But I want to make it perfectly clear that we did undertake to hear you today and tomorrow.

Mr. Rhoads: That was the only reason that I consented to Dr. Boehm even permitting—

Judge Biggs: Mr. Rhoads and Mr. Sawyer, this is not anything for which you are responsible; there have been certain special circumstances which have developed.

Suppose you see if you can stipulate and we will stand in recess until two o'clock.

Mr. Rhoads: I am awfully sorry but I couldn't get him here earlier.

Judge Biggs: That is all right.

(Recessed at 11:50 a. m. until 2 p. m.)

[fol. 248]

Afternoon Session

Present: Counsel as before noted.

Mr. Rhoads: If Your Honors please, may I suggest that we note the appearance of my partner, Mr. Robert T. McCracken, as counsel for the defendants in this case.

Judge Biggs: It is a pleasure to note your appearance, Mr. McCracken.

Mr. Rhoads: Dean Weigle, will you take the stand, please.

LUTHER ALLAN WEIGLE, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Rhoads:

Q. Dean Weigle, will you be good enough to keep your voice up so that Their Honors to your right as well as we out here may be able to hear you distinctly, sir.

Dean Weigle, where do you live, sir?

A. New Haven, Connecticut.

[fol. 249] Q. And what is your profession?

A. I am Dean Emeritus of the Yale University Divinity School.

Q. How long, sir, have you been Dean Emeritus of the Yale Divinity School?

A. Since 1949.

Q. Prior to that time what was your ~~status~~ or professional association with the Yale Divinity School?

A. I was Sterling Professor of Religious Education and Dean of the Divinity School.

Q. And from what period to what period, sir?

A. I was professor from 1916 to 1949, and Dean from 1928 to 1949.

Q. During those respective years were you also Sterling Professor of Religious Education, sir?

A. From 1924 on.

Q. On to 1949?

A. Yes.

Q. Dean Weigle, you were originally a resident of Pennsylvania, were you not?

A. Yes.

Q. Or a native Pennsylvanian.

Where were you born, sir?

A. Littlestown.

[fol. 250] Q. Now, would you be good enough to give us the benefit of a resume of your educational background, sir.

A. My elementary and secondary education was in the public schools of Altoona.

I graduated from the Gettysburg College in 1900; had two years in the Lutheran Theological Seminary at Gettysburg; three years, 1902 to 1905, in the Graduate School of Yale University.

Q. While in the Graduate School of Yale University did you receive any degrees, sir?

A. I received a Ph.D. degree in 1905.

Q. From the Yale Graduate School?

A. From the Yale Graduate School.

Q. Did you subsequently receive an LL.D.?

A. Yes.

Q. And from where?

A. Well, I will have to count up.

Q. Was it Gettysburg, sir?

A. Yes.

Q. And you received your M. A. degree from Gettysburg, I believe, in 1903?

A. Yes.

Q. Now, Dean Weigle, following your collegiate education did you specialize in any particular work professionally?

[fol. 251] A. In philosophy.

Q. Did you thereafter become associated with any institutions of learning prior to going to Yale?

A. From 1905 to 1916 I was Professor of Philosophy in Carlton College in Minnesota.

Q. From what time?

A. From 1905 to 1916.

Q. At the conclusion of 1916 where did you go?

A. I went to Yale in 1916.

Q. While you were at Carlton College, what did you teach?

A. Philosophy, psychology and education. We had settees in those days.

Q. Could you tell us, sir, what experience you had in the

field of education in Minnesota, outside of the teaching at Carlton College?

A. I was president of the Minnesota Educational Association in 1913.

Q. For one year?

A. Yes.

Q. What was the Minnesota Educational Association?

A. It is an association of teachers, both public schools and in the colleges, of Minnesota; a professional association such as you have in all states.

Q. Now, while at Carlton College you not only taught but [fol. 252] you also became Dean of that institution, did you not?

A. Yes.

Q. Did I get the years during which you were Dean of Carlton College?

A. 1910 to 1915.

Q. Dean Weigle, have you served on any special committees or church organizations which have been concerned with religious education?

A. Yes.

Q. Could you tell us what those associations were?

A. Well, beginning in 1914 I was on the International Sunday School Lesson Committee and was its chairman for part of the time.

I was the Chairman of the Educational Committee for the Federal Council of Churches in the late 1920's.

I was Chairman of the Administrative Committee of the Federal Council of Churches from 1928 to 1932.

I was President of the Federal Council of Churches, 1940 to 1942.

Q. Did you at any time, sir, become associated with a committee known as the American Standard Bible Committee?

A. I did.

[fol. 253] Q. Can you tell Their Honors first what was the nature of that committee and what was your association with reference to it?

A. In 1929 the International Council of Religious Education, which is a body that brought into association the

Educational Boards of some 44 Protestant denominations, acquired the copyright of what was known as the American Standard Version of the Bible, which was published in 1901. They secured the renewal of that copyright in 1929 and appointed a committee of scholars to have charge of the text.

That committee was organized definitely with 15 scholars as its members in 1930. I was made chairman of that committee at that time and have been its chairman ever since.

Q. And presently you are its chairman, is that correct, sir?

A. Yes.

Q. Now, you said it was composed of 15 scholars, including yourself, is that correct?

A. Yes.

Q. Could you name for the benefit of the record some of those scholars who were members of that committee of which you are chairman?

A. Dr. Henry Cadbury.

[fol. 254] Dr. James Moffatt.

Dr. Edgar J. Goodspeed.

Do you want more?

Q. Yes, if you could do so.

A. Dr. J. P. Smith.

Dr. F. C. Eiselen.

Dr. W. R. Taylor.

I am trying to think of those original men. Most of them have died.

Dr. Andrew Sledd.

Q. Well, now, Dean Weigle, you have given us the names of at least representative members of that committee. From the point of view of faith or faiths, what representation among the different faiths was there on that committee?

A. Dr. J. R. Sampay, whom I failed to remember a moment ago, was Southern Baptist.

So was Dr. A. R. Robertson Southern Baptist.

Dr. Edgar Goodspeed was Northern Baptist, as it was then called, American Baptist now.

Dr. Henry Cadbury was a Friend.

Dr. Eiselein and Dr. Shedd were Methodists.

I was Congregational.

Dr. Armstrong of Princeton, whom I failed to mention a moment ago, was Presbyterian.

[fol. 255] And so it goes down the line.

Q. Now, what was the purpose of the organization of that committee known as the American Standard Bible Committee?

A. Well, we were charged as our first duty to inquire as to whether or not the time had come to undertake another revision of the King James Version of the Bible. Such a revision had been made in the 1870's, which was published in Great Britain in 1881 and 1885.

The American Committee, which was associated with the British Committee, was given freedom to publish its edition after 14 years, and published its edition in 1901, which was known as the American Standard Version. That is the version which was placed in our hands as our charge to maintain the purity of its text. But we were told by the Council that we should investigate whether or not the time had come, in the light of new archeological discoveries, in the light of new linguistic evidence, whether or not the time had come to undertake a revision again.

We spent three years upon that problem of seeking to determine whether the time had come for another revision. At the end of that period we reported to the Council that in our judgment the time had come. The result was that in 1937, after a few years' delay due to the need to secure funds for the project, we were commissioned to undertake [fol. 256] the revision of the American Standard Version of the Bible in the light of modern scholarship as to the meaning of the Hebrew and Greek text.

We were also charged to maintain those qualities which have made the King James Version a matchless example of English literature.

Q. Did your Committee, Dean Weigle, proceed to carry out its commission?

A. We did.

Q. Now, will you tell Their Honors the method by which

the revision which was then contemplated was accomplished, the procedural methods adopted?

A. The Committee was divided into two sections, a New Testament section, which had to deal with the Greek text of the New Testament, and an Old Testament section, which had to deal with the Hebrew text of the Old Testament.

Our method was to assign Books to individual members of the Committee who would make what they regarded as the necessary revision. That draft was then circulated among the members of the Committee. When we met in face-to-face session, which we did for an average of four weeks out of each year for each section, we discussed those drafts verse by verse and word by word and reached our conclusions in that face-to-face conference.

[fol. 257] The draft that resulted from that process was mimeographed and it in turn was sent to all the members of the Committee and also to all the members of an advisory committee of some 50 or more members. The advisory committee was made up by our inviting each co-operating denomination to name scholars on whom it relied who would criticize these drafts for us.

On the basis of the returns that came from the individual members of the Committee and that came from the advisory committee, a written agenda was prepared of suggestions that were to be acted upon by the Committee itself. We then went over the entire Bible again in the light of this written agenda and the result of that finally was the finished product which was put in the hands of a small editorial committee to prepare for the printer.

Q. When finally was the Revised Standard Edition, which I take it was the product of your Committee's work, actually completed?

A. We completed the work on the New Testament in 1946. Or, rather, it was published in 1946. We had worked for nine years upon it.

The work on the Old Testament took longer, it took fifteen years and was published in 1952.

Q. And that is now known as what?

[fol. 258] A. The Revised Standard Version of the Bible.

Q. And that was the result of the efforts of some 15 scholars who composed the Committee, sir, as well as the cooperating efforts of other scholars to whom drafts and redrafts were submitted for purposes of criticism and modification, is that correct?

A. It was the efforts of the 32 scholars who finally composed the Committee, due to the fact that there were men who died and could not go on with the work. All in all there were 32 men who actively took part in the revision.

Q. Now, Dean Weigle, I understand, sir, that you yourself are familiar with Greek. Is that correct?

A. Yes. I trained to teach Greek in the first place and taught it for two years.

Q. Are you also familiar with Hebrew?

A. Yes.

Q. And have you personally engaged in the work of translations such as you have described as being done by this Committee?

A. I have. I was not simply the business head or administrator of this Committee. I was a member of the Committee with the same standing as any other, and I always voted when I put the question.

Q. Exactly. Thus differentiating you from the typical [fol. 259] chairman, is that correct, sir?

A. Yes.

Q. Now, were the other 32 scholars who composed the Committee scholars in the sense of the word that they were translators—

A. Yes.

Q. —and familiar with the original Greek and Hebrew?

A. Yes.

Q. Dr. Weigle, would you tell us what are the sources of the translation from which the Revised Standard Edition was made.

A. The base is the Masoretic Hebrew text of the Old Testament and the Greek text of the New Testament.

By Judge Kirkpatrick:

Q. What was the word you used, Doctor?

A. Masoretic. M-a-s-o-r-e-t-i-c; the Masoretic Hebrew.

text. That is a standardized Hebrew text which was standardized, oh, about the Sixth or Seventh Century.

Q. Was that a text that was translated from original Greek documents or—

A. No, no, that is the original Hebrew text.

Q. The original Hebrew text?

A. Perhaps I would have to distinguish a bit about this word "original." We do not possess the original documents [fol. 260] of any of these Hebrew books, the original manuscripts. We do not possess the original manuscripts of the Greek New Testament. What we possess are of course copies that have been made throughout the centuries.

Now, one of the outstanding reasons for undertaking revision of the King James Version is the fact that in the New Testament, for example, the King James Version was based upon the Greek text as edited by Erasmus in 1516, and Erasmus had only eight Greek manuscripts from which to edit that text. The oldest of his manuscripts was from the Tenth Century A. D. Because all of these manuscripts were medieval manuscripts they contained the accumulated deviations and possible errors of manuscript copying through 14 centuries. We now possess around 4,500 Greek manuscripts of the New Testament and about 200 of those manuscripts are really ancient in the sense that they come from the Third or Fourth or Fifth Century and are in the old uncial or capital text.

Now, the whole problem of textual scholarship is to determine as closely as we can what the original text of the New Testament was.

Q. How does that apply to the Old Testament, what you have said?

A. That applies to the Old Testament in this respect, [fol. 261] that before the Masoretic text was standardized, in say the Sixth Century, there had been the same sort of possible errors in manuscript copying in this Hebrew text that there had been before. Now, it chanced that the Latin Vulgate, which is a Latin translation of the Old Testament, and the Greek Septuagint, a Greek translation of the Old Testament, were made before this time of standardization, and so we will find that there are cases where

omissions have been made in the Masoretic Hebrew which we can supply now by turning back to the Vulgate and to the Greek Septuagint.

Q. That is very interesting, because I had heard in discussion that the Hebrew Old Testament was entirely derived from a Greek source. That is evidently not correct.

A. No.

Q. But you explained why it was. I can see how the idea arose.

A. Yes, sir.

Judge Kirkpatrick: All right.

Mr. Rhoads: Did Your Honors have any other questions?

Judge Biggs: No, no question.

By Mr. Rhoads:

Q. Now, Dean Weigle, when it came to the translation of the King James Version, or the revision of the King James [fol. 262] Version, which you have described, you went back in your Committee to the original text such as you have described to His Honor, Judge Kirkpatrick, and have brought forward in your testimony. Now, were those texts available to the scholars who prepared the Vulgate?

A. Presumably.

Q. Were they available to the scholars who prepared translations of the Bible prior to the King James Version in 1611?

A. Some of them.

Q. Could you inform us, simply so that we can get a complete record of what we are talking about, what was the cause or what precipitated the development of what is known colloquially as the King James Version of the Bible? I am speaking now of the Standard King James Version as distinct from the Revised.

A. Yes. The Roman Church—perhaps I shouldn't use that phrase for it. Say the Catholic Church. The Catholic Church of the Middle Ages had adopted the Latin Vulgate as its standard text of the Bible and if translations were made into the vernacular, those translations were made from the Latin Vulgate. One of the outstanding issues

of what we know as the Protestant Reformation was the feeling of Martin Luther and others, Calvin and others associated with them, that we must return to the original [fol. 263] Hebrew text; remembering always the qualification of the word "original" that I indicated; we must return to the Hebrew text of the Old Testament and to the Greek text of the New for our translations.

The first translation into English was made by William Tyndale, a translation of the New Testament made from the Greek.

Q. Made from the Greek?

A. From the Greek. And it was the first English translation to be printed.

Following that work of Tyndale, which was first published in 1525 and '26, there were a number of translations: Coverdale, a translation of the entire Bible; Matthew's Bible, which was in part Coverdale's work and in part Tyndale's work; the translation of the Bible by Richard Taverner; the Great Bible; which was published in the 1540's.

By Judge Biggs:

Q. Why was that called the Great Bible, Doctor?

A. Because of its size.

Q. Purely on account of its size?

A. Yes. It was an enormous volume. Their thought at that time was not to publish it for the possession of families or for individual readers. You may have heard how the Bible was chained to the lectern so that no one could get [fol. 264] away with it, but he would have had a pretty hard time because it was so big.

Following the Great Bible there came the Geneva Bible, which was a translation which was made by English refugees in Geneva and which struck a new line because it was a small volume and was intended for family use as well as for public use in the churches.

Following the Geneva Bible there came the so-called Bishops' Bible of 1568 and 1572.

In the meantime, the English Catholics on the Continent had prepared an English translation of the Bible which

they made from the Vulgate in place of from the Greek, and that was published in 1582.

Well, at a conference in Hampton Court in 1604, held by King James, a conference was convened in order to give to the Puritans on the one hand and the Anglican Catholic Party on the other hand, within the Church of England, a chance to compose their differences. In the course of that conference the proposal was made by one of the Puritan representatives that the time had come for another translation of the Bible, one that would be less sectarian than any that they had had up until that time, and King James was happy with that suggestion. He particularly animadverted with respect to the Geneva [fol. 265] Version, which he felt had too many sectarian elements to it, and as a result the commission was formed of scholars, British scholars of that day, taking in both parties. And they finally published the King James Version in 1611.

By Mr. Rhoads:

Q. Now, Dean Weigle, the several Bibles to which you have referred, the Geneva Bible, the Great Bible and the others which you have named, were all translations from certain original sources, were they not?

A. Yes.

Q. So that to that extent they had a common source with the King James Version as well as the Vulgate Version, is that correct?

A. Yes.

Q. When the Commission under King James between 1604 and 1611 set forth to make its translation, subsequently known as the King James Version, they, too, went to original sources, did they not?

A. They had the Masoretic Hebrew text and they had Beza's Revision of the Erasmus text, 1560.

By Judge Biggs:

Q. Pardon me. What was Beza's Revision?

A. It was simply a Greek text in which he profited from the possession of a few more manuscripts than Erasmus [fol. 266] had had.

Q. And published?

A. It was essentially Erasmus' texts. It was also published.

By Mr. Rhoads:

Q. Now, Dean Weigle, the work that resulted in the first King James Version was done by something in the nature of a commission, wasn't it?

A. Yes.

Q. Who composed that commission? Were they scholars?

A. Oh, yes, all of them.

Q. Scholars of their day?

A. All of them, yes.

Q. Was the attempt, so far as the translation via the King James commission, an attempt to apply the then-existing true scholarship to a translation of the Bible?

A. It was.

Q. Was it intended, so far as the translation was concerned, to be an objective approach to a subject of scholarship?

A. It was so intended, and it succeeded.

Q. Now, Dean Weigle, there are other versions of the Bible than the King James, are there not?

A. Yes.

[fol. 267] Q. Is one of them the Douay Version?

A. Yes.

Q. What is the Douay Version?

A. It is a translation that was made by British Catholic scholars on the Continent, a translation of the Old Testament which was made at much the same time as the Rheims New Testament a little bit later.

Q. As which New Testament?

A. As the Rheims New Testament.

Q. The Rheims New Testament, thank you.

A. (Continuing) But it was not published until 1609.

The interesting thing is that the Catholic Version of the New Testament which had been published in 1582 had a good deal of influence upon the King James Version of the New Testament, but the Douay Version, which was published only in 1609, did not have a similar influence upon the

King James Version of the Old Testament, for natural reasons.

Q. Has there been any further revision over the years of the Douay Version?

A. Oh, yes.

Q. And what is the name of that revision?

A. Well, the principal revision is the one by Challoner, which was made—I am sorry, I have forgotten just when it [fol. 268] was made, About 100 years, 150 years after the first publication in 1609.

Q. Has there been further work on the Douay Bible in recent years? I refer particularly to the Confraternity.

A. The Confraternity of Christian Doctrine is rather a new translation from the Vulgate than simply a revision of the Douay Version. Of course, your problem as to where you stop calling a revision a revision and when you begin to call it a new translation is a place that can't be exactly defined. But it surely should be said to the credit of the Confraternity of Christian Doctrine that they have faced the problem of making a translation of the Bible for our day with just the same objectivity, with just the same quality of linguistic skill and with just the same conscience in going back to the original texts that, well, that you would expect of good scholars.

Q. Now, with reference to what has been known as the Jewish Old Testament, what was the name of that text, sir, the current Jewish Bible?

A. I can't go farther back than the publication of the English Version by the Jewish Publications Society in this country.

Q. And that, I believe, sir, has been identified in this case as D-7, an exhibit in this case.

[fol. 269] I ask you whether that is the version or edition to which you have just referred.

A. That is, copyright 1917.

Q. By the Jewish Publications Society of America?

A. Yes.

Q. Now, Dean Weigle, all of these versions or translations of the Bible to which you have referred have, I believe, as their source certain original documents that are

available to scholars now and have been for centuries, is that correct?

A. Yes.

Q. Were those original documents, from which the translations were made into the Latin Vulgate in your opinion sectarian in character?

A. They were not.

Q. Were the original Hebrew or Greek manuscripts which are the source or basis of the Douay Version of the Bible, or the King James Version, as we now know it, in your opinion sectarian in character?

A. They are not, no.

Q. Does that apply also to the other series of Bibles or names of Bibles to which you have just referred earlier?

A. It does.

Q. Dean Weigle, what is your definition, if I may use that [fol. 270] expression, of the Holy Bible?

A. Well, the Holy Bible is the Hebrew Old Testament and the Greek New Testament together with its various translations into the different vernaculars.

Q. Will you state whether in your opinion the Douay Version that we have described and have been talking about is under the definition of the Holy Bible.

A. It is.

Q. Is the Jewish translation that you have just identified, D-7, within your definition of the Holy Bible?

A. It is.

By Judge Biggs:

Q. Does that contain the New Testament?

A. It does not.

By Judge Kirkpatrick:

Q. That doesn't quite coincide with your definition, then. As I understood you to say, the Holy Bible was composed of the Greek New Testament and the Hebrew Old Testament.

A. Yes.

Q. Now, if you cut out the Greek New Testament do you still have the Holy Bible?

A. You have the Holy Bible in that part of it that you retain.

Q. Yes, the part of it you retain, surely. I agree with [fol. 271] that, but I don't think it quite agrees with the definition that you gave.

Can you give us an idea of when the term "Holy Bible" first appeared, or how it came about, how long it has been in existence? Or is that something that there is no record or trace of?

A. Well, I am sure I could find a record of it if I could go to the library and look up these old Bibles. I could see when they first began using that title.

Judge Kirkpatrick: I was just wondering.

By Judge Biggs:

Q. Is not the Jewish Book which is in evidence, instead of being entitled "The Holy Bible," isn't it entitled "Holy Scriptures"? Is that not so?

Mr. Rhoads: Just a minute, Dean Weigle. I will get that. I think that is correct, sir.

(Exhibit D-7 was handed to the witness.)

A. "The Holy Scriptures According To The Masoretic Text."

Judge Biggs: Thank you.

A. (Continuing) Perhaps we can make that distinction. The Jews would use "The Holy Scriptures." We use "The Holy Bible."

[fol. 272] By Mr. Rhoads:

Q. Now, Dean Weigle, you are familiar, sir, with the—well, before I come to that question, Dean, have you had occasion to publish any books on the subject matter of the Bible?

A. Yes.

Q. Could you name one or two, if you will?

A. Well, I published a book entitled "The English New Testament From Tyndale To The Revised Standard Version" some years ago.

Q. As I simply have that in my hand, may I ask whether the document which I show you—

Mr. Sawyer: May I see it, Mr. Rhoads?

Mr. Rhoads: Yes, I am sorry.

Judge Biggs: Is this offered merely by way of qualification?

Mr. Rhoads: Yes, sir, that is all, sir, not for anything further than that. And of course I don't intend to offer the book, sir. I simply want to have it identified so that we may know the work.

Judge Biggs: Mr. Sawyer, would you concede that Dean Weigle was qualified as an expert?

Mr. Sawyer: Yes, indeed, sir.

Judge Biggs: Then I think we might omit further study [fol. 273] of this.

Mr. Rhoads: Certainly. I wouldn't press it for one moment, sir.

Judge Biggs: Mr. Sawyer agrees that he is qualified as an expert.

Mr. Rhoads: Oh, yes.

By Mr. Rhoads:

Q. Dean Weigle, from your knowledge of the sources and methods available to early scholars, do you believe that the King James Version, that is the Standard King James Version translation, is an accurate and scholarly piece of work?

A. It is, yes.

Q. Dean Weigle, coming to the issues in this case, there is a statute in Pennsylvania which provides—and I am merely summarizing it—that there shall be read in the public schools of this Commonwealth ten verses of the Holy Bible without comment at the opening of school.

May I ask you whether you have any opinion as to whether the reading of ten verses of the King James Version of the Bible without comment is sectarian in character.

Mr. Sawyer: I think that is objectionable, Your Honor. I think it comes close to—

Judge Biggs: Let him complete the question.

[fol. 274] Will you please not answer until the Court has had an opportunity to rule.

The Witness: Yes.

Judge Kirkpatrick: I think he did complete it.

Judge Biggs: Had you completed the question?

Mr. Rhoads: Yes, sir.

Judge Biggs: Pardon me. Would you read it again, please?

(The question was repeated by the reporter as follows:

"Q. Dean Weigle, coming to the issues in this case, there is a statute in Pennsylvania which provides—and I am merely summarizing it—that there shall be read in the public schools of this Commonwealth ten verses of the Holy Bible without comment at the opening of school.

"May I ask you whether you have any opinion as to whether the reading of ten verses of the King James Version of the Bible without comment is sectarian in character.")

Judge Biggs: The basis of your objection?

Mr. Sawyer: Well, Your Honor, there are two, really. In the first place, I don't know through this line of questioning what Mr. Rhoads or the witness means by "sectarian." I was going to ask about that in cross-examination, but it seems to me that this question usurps your function to some extent. You might as well ask him if it is constitutional.

Judge Biggs: We will overrule the objection and take the answer.

Would you answer the question, please, Dean Weigle.

A. In my opinion, because the Bible is not a sectarian book, that practice is not sectarian.

By Mr. Rhoads:

Q. Would that answer be the same, Dean Weigle, if there were a reading in the same manner as I have described from the Douay Version of the Bible?

A. The same.

Q. Would the same apply if the reading were from the Jewish Version of the Bible which you have identified a moment ago?

A. The same.

Q. Now, Dean Weigle, I come to the next question. In view of your long experience in the teaching profession, in educational activities and in religious endeavors involving also the translations of the Bible that you have just referred to in your testimony, will you tell us whether you have any opinion as to whether the kind of reading of the [fol. 276] King James Version of the Bible which I have just related to you a moment ago would, in your opinion, tend to the establishment of a religion.

Mr. Sawyer: Your Honor, I object to that. That is now asking him whether or not the practice—

Judge Biggs: We sustain the objection.

Mr. Rhoads: Would Your Honor hear me on that?

Judge Biggs: Yes.

Mr. Rhoads: It seems to me, sirs, that the issue here is a twofold issue, the sectarian character as well as whether the act itself is something which under the Constitution, because it is part of the issue in this case, is a practice which would tend toward the establishment of a religion, because I understand that that is part of the case.

Judge Biggs: It most certainly is, but is not that an inference or a conclusion to be drawn by the Court?

Mr. Rhoads: If Your Honors please, unquestionably the ultimate conclusion is Your Honors', and not for one moment would I suggest that this question were to be in substitution for Your Honors' opinion. But it seems to me that it is one of those issues on which we produce here a scholar who has devoted a great part of a long life to [fol. 277] this question, the very question whether the thing that is involved here in this case is sectarian, is of a character which would be violative of the Constitution.

Now, it would seem to me—

Judge Biggs: That is a question of constitutional law.

Judge Kirkpatrick: Yes. Suppose you produced a constitutional lawyer for his opinion on that matter. That certainly wouldn't be relevant. This gentleman has very full knowledge of one phase of the thing but has he any more knowledge than any person who has studied constitutional law? And assume that the Judges have at least a smattering of constitutional law.

Mr. Rhoads: Well, it would seem to me, sir, that the issue is a little different where we were suggesting that Your Honors should be advised on constitutional law by a lawyer. I think that would be clearly a trespassing upon the ultimate function of the Court. But I am thinking here—and I must say I am thinking aloud with Your Honors, very frankly—it occurs to me that this is in a possibly rarefied atmosphere of expert testimony. Now, if Your Honors feel that I am going beyond my limits in this offer I certainly do not—

Judge Biggs: Mr. Rhoads, after all, you have qualified the doctor as an expert on the subject of religious education, religious lore and religious background, but you haven't qualified him as a constitutional lawyer. Even if you had I would still think that would remain the prerogative of the Court.

Mr. Rhoads: Well, I frankly suggest, sir, that I haven't attempted to qualify him as a constitutional lawyer, and had I done so I would not have asked the question under the circumstances.

Judge Biggs: He is probably a much better constitutional lawyer than the present speaker, but nonetheless that function is confided to us.

Mr. Rhoads: Would Your Honor be good enough to note an exception.

Judge Biggs: You don't need an exception because we will note you one anyway.

By Judge Kirkpatrick:

Q. May I ask a question. Do you think that if a teacher by chance happened to be a person of the Jewish faith and he eliminated the King James Version entirely from the school, didn't permit anybody to read anything from the King James Version and only allowed readings from the Scriptures, the Hebrew Scriptures, in English, of course, do you think that he would be conducting exercises which involved the reading of verses from the Holy Bible?
[fol. 279] A. He would certainly be conducting exercises which would involve the reading of the Holy Scriptures, as he understands the Holy Scriptures.

Q. But the trouble is the law says the Holy Bible is what must be read.

A. Yes. His practice would be a sectarian practice.

By Mr. Rhoads:

Q. If he permitted nothing else, you mean.

A. Yes, if he permitted nothing else.

Judge Kirkpatrick: Yes, that is what I inquired.

Mr. Rhoads: Is that all, sir?

Judge Biggs: Yes, will you proceed.

Mr. Rhoads: Thank you.

By Mr. Rhoads:

Q. Now, Dean Weigle, based upon your experience as an educator, have you formed any opinion as to whether from the educational standpoint the reading of ten verses of the Holy Bible as described in this case—and by "The Holy Bible" for the minute I will refer to the King James Standard Version—do you believe that that possesses any educational value?

A. I do.

Q. What kind of educational value do you think it possesses, sir?

Mr. Sawyer: Your Honors, I didn't object to the question because it seemed to me it makes very little difference, but I think if we are going to develop this at length then I would object on the ground of whether it possesses educational value or not is quite irrelevant. This might be agreed by every possible educational authority to be the best pedagogy possible. If the Constitution bars it it couldn't be read, and I think that we can waste a lot of time if we develop the ideas of what value this might have educationally.

Judge Biggs: We will overrule the objection.

By Mr. Rhoads:

Q. Dean Weigle, will you answer the question, sir.

Would you like it re-read?

A. If you please.

(The question was repeated by the reporter as follows:

"Q. What kind of educational value do you think it possesses, sir?")

A. It possesses a moral educational value because, after all, the Bible is the record of the experience of the people that discovered what God really is like, and has given us the Ten Commandments and other moral precepts which are [fol. 281] contained in the Holy Bible.

It is of very high literary value because the King James Bible is what one authority has called the noblest monument of English prose. It has contributed to the making of the English language as no other English book has done.

It is of great value, it seems to me, to the perpetuation of those institutions and those practices which we ideally think of as the American way of life, because the Bible has entered vitally into the stream of American life.

I won't stop to say anything more than that Lincoln was an assiduous student of the Bible; that much that Lincoln did and much that Lincoln wrote bears the stamp of his understanding of the Bible upon it.

We have recently had a book by a man who has investigated the early fathers, in which he finds that among all of them, Franklin, Washington, Jefferson, Madison, John Adams, though they were men that were far from the strictest orthodoxy or far from being adherents to everything for which institutional religion stands, they had this supreme reverence for the Bible.

Those are my reasons, sir.

By Mr. Rhoads:

Q. And that is a summary of your reasons in answer to my recent questions, is that correct, Doctor?
[fol. 282] A. Yes.

By Judge Kirkpatrick:

Q. That is the book entitled "In God We Trust"?

A. Yes, by Norman Cousins.

By Mr. Rhoads:

Q. Dean Weigle, there is one phase of the case which I have neglected to advert to in my questioning. There is also the practice in Abington School District of reciting the Lord's Prayer at the same opening exercises. Have you any observations as to that practice, sir?

A. It seems to me to be an entirely seemly and proper practice. After all, it is very much like the opening of legislative assemblies with prayer.

I see nothing in the Lord's Prayer that is sectarian. Everything in that prayer can be paralleled in Jewish literature, in the Holy Scriptures of the Jewish people.

Q. Doctor, I have been looking over some notes here and in referring to your background I do not believe that I asked you whether you had been ordained as a minister.

A. I was ordained as a Lutheran minister in 1903.

Q. Did you ever have any pastoral assignment?

A. Yes. I was for four months in 1903 the first pastor of a newly gathered congregation at Mount Union in Penn-
[fol. 283] sylvania. And I was for one year pastor of a Lutheran church in Bridgeport, Connecticut.

Q. Is that the sum of your pastoral experience?

A. That is the sum of my pastoral duties.

Q. And the rest of your very busy life has been—

A. In colleges and universities.

Q. —involved as you have just told us?

A. Yes.

Q. Dean Weigle, we all want to thank you very much for your having come.

A. You are welcome.

Mr. Rhoads: Now you may cross-examine, Mr. Sawyer.

Judge Biggs: I think we better take a brief recess, six or seven or eight minutes. We will then resume.

(Recess, 2:00 o'clock P. M. until 3:10 o'clock P. M.)

Cross examination.

By Mr. Sawyer:

Q. Dean, the New Revised Standard Version of which you spoke in the early part of your testimony was greeted with some controversy in the Protestant world, is that correct?

[Vol. 284]. A. I can't quite hear you. Will you speak a little louder, sir?

Q. Yes, indeed, sir.

Was that version greeted with some controversy in the Protestant world when it was published?

A. No, it wasn't greeted with any controversy in the Protestant world. It received some controversy from certain fringes, but—

Q. What were those fringes?

A. —it has been—

Mr. Rhoads: Just wait. Let him answer, please.

A. It has been welcomed very heartily in the Protestant world.

By Mr. Sawyer:

Q. What were the fringes that you speak of that took exception to the New Revised Version?

A. Well, people who thought that there ought be no revision.

By Judge Kirkpatrick:

Q. Wasn't a good deal of that feeling sentimental, you might say?

A. I think so.

[Vol. 285]

By Mr. Sawyer:

Q. Are you familiar with an organization known as the International Council of Christian Churches?

A. I have heard of it, sir. I am not familiar with it.

Q. And you have heard of a Mr. Carl McIntyre, who is the founder and president?

A. I have heard of him. I don't know him.

Q: Did he take up a crusade, so to speak, against the New Revised Standard Version?

A: Yes, but of course he has taken up a great many crusades, including one against the Presbyterian Church.

Q: People feel strongly about these matters, don't they, translations of the Bible? Don't they, Doctor?

Mr. Rhoads: Objected to, sir.

Judge Biggs: I think that is proper cross-examination.

Mr. Rhoads: Withdrawn.

A: Of course people feel strongly. After all, one of the things that has happened in the years has been that the publishers of the King James Version have failed to keep alive the very remarkable preface to the King James Version entitled "The Translators to the Reader," in which—

By Mr. Sawyer:

Q: I will come to that, Doctor. I don't mean to cut you [fol. 286] off, but I believe you did answer my question, which was whether or not they felt strongly.

A: I am just telling you that they felt very strongly, and I am going to tell you how that happened back in the days of the King James Version.

Q: Well, if you will permit me, sir, I will continue with my line of questioning. Then I am sure Mr. Rhoads will take you over that if he cares to.

A: All right.

Judge Biggs: Yes, I am sure we will get along better.

By Mr. Sawyer:

Q: Now, did there come a time, sir, if you know, when there was a burning of the Revised Standard Version a few weeks after it was published in December of 1952, down in North Carolina? Do you remember that incident?

A: Yes.

Q: Do you recall that one of the things that was attacked was the fact that in I believe it is Isaiah 7:14 the New Revised Standard substitutes the word "woman" for the word "virgin" in speaking of the prophecy of Isaiah which the

Christian Church has widely acclaimed and heralded in the coming of Christ? Is that an incident which is familiar to you, sir?

[fol. 287] A. Yes.

Q. Was it familiar to you that a Rev. Martin Luther Hlicks, or Hucks, I believe it is—does that gentleman's name mean anything to you, sir?

A. It doesn't register.

Q. It does not.

A. But what is this leading to?

Judge Biggs: The "Martin Luther" registers, doesn't it, Doctor?

The Witness: The "Martin Luther" registers, but what was this leading to?

By Mr. Sawyer:

Q. And you recall that the Gallup Poll was taken on the preferences of people as to the New Revised Standard Version or the King James Version?

A. May I ask why you are getting this chapter into the record, without asking me any questions about it?

Judge Biggs: Dean, we have a method of procedure here with which you are familiar. One of them is that—

The Witness: That I don't ask any questions.

Judge Biggs: —counsel ask the questions and you make the answers.

The Witness: Right.

[fol. 288]

By Mr. Sawyer:

Q. I was wondering if you knew that there had been a Gallup Poll.

A. What?

Q. If you knew there had been a Gallup Poll taken as to whether people were in favor or against the revision of the King James Version known as the New Standard Revised Version. Did you know that a Gallup Poll had been taken?

A. No.

Q. Now, I wonder, sir, if you could define for us what you mean when you say "sectarian."

A. A movement is sectarian when it is meant to establish the distinctive doctrines of some particular sect as opposed to the doctrines of other sects.

Q. And when would a Bible be sectarian?

A. When it was so translated as to do just that, that is,—

Q. And would you say, sir,—

Mr. Rhoads: Wait a minute. Do you have anything further?

A. (Continuing) That is, to tend to establish the distinctive doctrine of that particular sect as opposed to other sects.

By Mr. Sawyer:

Q. Would you say, sir, that in the translation of Isaiah 7:14 that there is no sectarian aspect as to whether or not [Vol. 289] one believes that the word of God there set forth is that a young virgin shall conceive or a young woman shall conceive? Is that a sectarian issue?

A. That is not a sectarian issue.

May I ask a bit of liberty to speak to that, sir?

Judge Biggs: Yes, you may.

A. (Continuing) The doctrine of the virgin birth, so far as the Scriptures, so far as the Holy Bible is concerned, rests upon various direct statements which are made in the New Testament, in Matthew and in Luke. It does not depend upon the translation of that particular text in Isaiah.

The Bible itself, of course, at that point is the Hebrew. A translation is just a translation. It chanced that the Septuagint used there as translation for the Hebrew word "almah," which means young woman—

By Judge Kirkpatrick:

Q. How do you spell that, please?

A. A-l-m-a-h. The Hebrew has a-l-m-a-h, which means young woman. It chanced that the Septuagint used at that place the Greek word "parthenos." The usual meaning of parthenos is virgin, but the Greek Septuagint is very loose

in its use of the word "parthenos." For example, it calls Dinah a parthenos after Shechem had raped her.

[fol. 290:] The translation of this word by scholars generally is young woman. It has been so accepted by all of the basic Hebrew dictionaries. It has been accepted by Fundamentalist scholars who may have objected to other points of the Revised Standard Version but do not object to this. It has been accepted by churches that, well, you wouldn't expect to accept it.

By Mr. Sawyer:

Q. Has it been rejected by others?

A. I don't know anyone that has rejected it that understands the Hebrew.

Q. I am not asking you whether they are wrong or right in their rejections, as your answer was, sir, but do you know that there are bodies of opinion within the Protestant world and outside of it which specifically rejected this translation?

A. Oh, yes.

Judge Biggs: I didn't get the answer. What was the answer, Doctor?

The Witness: Yes, there are some.

Mr. Rhoads: Are we now speaking; so that the record may be clear, of the Revised Standard Version published in 1946 and 1952? Is that correct, Mr. Sawyer?

Mr. Sawyer: Yes.

[fol. 291] Judge Kirkpatrick: No, he is only speaking of one passage.

Mr. Sawyer: One passage.

Mr. Rhoads: Oh, yes. I meant of the Revised, and I meant that passage.

Judge Biggs: This passage of the Revised Standard is what the record shows.

Mr. Rhoads: Yes, sir.

By Mr. Sawyer:

Q. Have the Catholics rejected it?

A. What is that?

Q. Have the Catholics rejected it?

A. Well, I know of no Catholics that have rejected this translation of Isaiah.

Q. Do you know of any who have accepted it?

A. I know of Catholic scholars to have accepted it, yes.

Q. Do you know of any acceptance of it by the Catholic Church?

A. The Catholic Church has not passed on the subject, as far as I know. You see, the Catholic Church has a recourse that Protestants generally do not have. They can translate what the Scriptures say and then they can put in a note what the authorized theology of the Church is with respect to that particular point.

[fol. 292] Q. Do you know whether or not the Catholics regard those notes as essential to a proper reading and understanding of the Bible?

A. I just don't know. I am not a Catholic.

Q. You don't know that?

A. I am not a Catholic.

Q. Doctor, would you say that the Holy Bible—and I am using those particular words the Holy Bible would be complete without the New Testament?

A. No.

Q. You defined, I believe, a sectarian Bible as one in which the message of a particular sect were conveyed by that version of the Bible. On that definition, Doctor, would you say that the New Testament was sectarian in that it conveys the message of a particular sect?

A. It conveys the message of Christians.

Q. Yes, as opposed to non-Christian sects?

A. Yes.

Q. When you said "non-sectarian," did you mean as among the various Protestant sects?

A. I meant among the various Christian bodies.

Q. Now, turning to the King James Version, were there any Jews on the scholarly committee that the King appointed to make that translation?

[fol. 293] A. The King James Version?

Q. Yes.

A. No.

Q. Were there any Catholics?

A. Well, certainly a good many of them would have called themselves Catholics, yes.

Q. But did they mean Roman Catholics?

A. No, they were not Roman Catholics.

Q. They meant Anglican Catholics.

Were there any Nonconformists, as they were referred to in those days?

A. They were Puritans.

Q. Would you call them Nonconformists?

A. It is a little—

Q. Were the sects generally known as Nonconformists at that time included among the scholars who translated the King James Version?

A. I don't think there were any Separatists.

By Judge Kirkpatrick:

Q. Any Presbyterians?

A. There were men certainly of Presbyterian conviction, but whether they were Presbyterians or not I don't know.

By Mr. Sawyer:

Q. You say in your book, Doctor, which was referred to, [fol. 294] that there were no Nonconformists on that committee. Would you think that is a fair statement as made in your book?

A. I think so, yes.

Q. Are you familiar with the dedicatory epistle of the King James Version?

A. Yes.

Q. Would you say that that epistle is sectarian in its nature?

A. Not that I remember.

If you have some specific item in mind, ask me about it.

Q. Well, I was referring to a portion, and I will read:

"... so that if, on the one side, we shall be traduced by Popish Persons at home or abroad, who therefore will malign us, because we are poor instruments to make God's Holy Truth to be yet more and more known unto the people, whom they desire still to keep in ignorance and darkness; . . ."

Would you think that statement had a sectarian aspect to it, sir?

A. It sounds a little that way, but that is not part of the Bible.

Q. Well, we are speaking now of the aegis under which this Bible came into being rather than the text.

[fol. 295] A. Well, of course it did not come under the aegis of the Roman Church.

Q. Would you think of the Bible as primarily the word of God or as primarily the literary and historical work about which you spoke on direct examination?

A. What are you asking me about now, my personal beliefs or—

Q. Well, Doctor, on what basis did you testify?

Mr. Rhoads: Objected to, sir. It is perfectly clear from the record the basis on which he testified.

Judge Biggs: We sustain the objection.

I think you can ask him the basis upon which he reached his expert conclusions but I do not think that his own faith or his own belief is pertinent.

Mr. Sawyer: I didn't ask him what it was, Your Honor. I wouldn't think of doing that. He asked me whether I was asking him that and I rejoined in the only way I knew, which was to ask him how he had testified in the first place, because I wished him to answer on cross from the same basis of knowledge on which he answered on direct.

Judge Biggs: Mr. Sawyer, there is no use in raising a point here which is undesirable. I felt that you were raising that point; however unconsciously you may have done so. [fol. 296] Mr. Sawyer: Should I say this to the witness then, sir:

My intention, Doctor, was to assume that you would testify on these questions of doctrine and theology and the like on the same basis now as you did on direct examination. You are qualified as an expert and therefore I assumed you would draw on that same expert knowledge.

A. (Witness nods head.)

Judge Biggs: The answer is "yes."

The reporter has to have an answer on the record.

A. Yes, the answer is "yes."

By Mr. Sawyer:

Q. Is the answer "yes" to my substantive question about the gravamen of the Bible?

Mr. Rhoads: If Your Honors please, may I suggest that the examination is somewhat argumentative and that if Mr. Sawyer would recast and restart his question it might be a little more helpful to all of us.

Mr. Sawyer: I shall do that, sir. I think we may have the dean a little at a loss.

Judge Biggs: I think your question is a little bit truncated in that respect.

[fol. 297] Mr. Sawyer: Yes, ~~we~~ are lost now.

By Mr. Sawyer:

Q. I will put the question this way, Doctor: In your opinion as an expert is the King James Version of the Bible to be regarded primarily as an historic record, as a piece of English literature or as the revelatory word of God?

A. Again you are asking me, sir, about my belief. I have stated that I think that this is a justified practice of educational value from the standpoint of morals, from the standpoint of literature, from the standpoint of the place that the Bible has occupied and continues to occupy in American life. Now, over and above that what I believe does not seem to me to be relevant to this inquiry.

Q. Doctor, maybe I can approach it this way. I would like to read you a paragraph from your book, sir, entitled "The English New Testament" which was referred to by Mr. Rhoads. The paragraph says:

"The message of the Bible is the central thing, its style is but an instrument for conveying the message. The Bible is not a mere historical document to be preserved. And it is more than a classic of English literature to be cherished and admired. The Bible contains the Word of God to man. And men need the Word of God in our time and hereafter [fol. 298] as never before."

Now, would that fairly express your feeling as to the respective proportion and importance of the three factors, historical, literary and religious, shall I say, embodied in the work that we think of as the Bible?

Mr. Rhoads: Now, if Your Honors please, I object to that phase of the question, whether it is by virtue of reference to a book written by the witness or otherwise. That phase of the question must of necessity involve the witness' statement of his own faith.

Judge Kirkpatrick: But how can he object when he has published the statement in this book?

Mr. Rhoads: I don't think he could object, sir, and I don't think he would object, but I am still saying that it seems to me that anything that is directed toward this man's faith is completely outside of this case.

Judge Biggs: We are not trying the issue of the dean's faith or anything in connection therewith, but it does seem to me that when you put your question what should be the respective values to be given to the factors to which the doctor has testified, you are entitled to an answer. Whether that necessarily includes some portion of his own mind, which of course must include some standard of belief or lack of it, I think he is entitled to the answer.

[fol. 299] Mr. Rhoads: With that suggestion by Your Honor I certainly have no objection to the question being asked or answered.

• Would you repeat the question?

Mr. Sawyer: I will ask the stenographer to do so, sir.

(The question was repeated by the reporter as follows:

"Q. Doctor, maybe I can approach it this way. I would like to read you a paragraph from your book, sir, entitled 'The English New Testament' which was referred to by Mr. Rhoads. The paragraph says:

"The message of the Bible is the central thing, its style is but an instrument for conveying the message. The Bible is not a mere historical document to be preserved. And it is more than a corner of English literature to be cherished and admired. The Bible contains the Word of God to man. And men need the Word of God in our time and hereafter as never before."

"Now, would that fairly express your feeling as to the respective proportion and importance of the three factors, historical, literary and religious, shall I say, embodied in [fol. 300] the work that we think of as the Bible?"

Judge Biggs: Would you answer it first, Dean, whether yes or no. Does it?

A. It does.

Judge Biggs: Then you may give such explanation as you wish.

It does?

A. Yes, I stand on what I said there. The point, however, is this. I stressed the moral value and the literary value and the historical value of the Bible as pertinent to the case that is before us. Now, the actual fact is that the Bible has those values because people have believed it, because they believe that there is something revelatory in it of what true morals are. It is not simply a literary exercise but its literature has arisen out of that faith.

Now, I am perfectly willing to grant that. I still would say that the reasons why it may have a place in our educational system are these three reasons that I gave.

By Mr. Sawyer:

Q. Doctor, isn't it true that there has even been controversy as to the Lord's Prayer, as to whether the pronoun in the opening phrase should be "which" or "who"? [fol. 301] A. Well, I don't know about that.

Q. Haven't you ever known of that controversy between those who say it should be "Our Father which art in heaven" and those who say it should be "Our Father who art in heaven"?

A. I have never heard of that. Let's have it.

Q. Well, I just wondered, Doctor, because on page 127 of your book you recount an incident in which someone invited your attention to—well, I will read it to you, sir.

A. Sure.

Q. "Much of what is said as to the value of the King James Version for use in worship is without any sound basis. One man argued that we should always say, 'Our

Father which art in heaven' because the word 'which' removes God from the company of men, and sets him apart as unique and transcendent. The King James translators would have laughed at such an interpretation; for them the relative pronoun 'which' has the meaning that the relative pronoun 'who' now has."

So isn't that an example, Doctor, of where a word may make a difference, as to whether or not you are a Transcendentalist or whether or not the God which you imagine is anthropomorphic?

A. Oh, no; oh, no. After all, when the King James Version [fol. 302] our people said, "Our Father which art in heaven" they meant exactly the same thing that we mean by "Our Father who art in heaven." There certainly is no controversy on that point.

This particular man to whom I referred is an eccentric in his feeling that "which" makes God transcendent.

Q. He is at least one, is he not, Doctor?

A. Yes, I had that controversy with him.

Q. It did make a difference to him, didn't it?

A. Perhaps.

Q. Now, again as to the content of the Bible, are there not books in the Old Testament which are included in the Catholic Bible which are not included in the King James and the Jewish Versions?

A. The King James contains the—you are referring to the books called the Apocrypha, I suppose?

Q. Yes. What are those books, Doctor?

A. First and Second Esdras, First and Second Maccabees, Judith, Tobit, the Wisdom of Solomon, the Wisdom of Sirach, usually called the Ecclesiasticus, the History of Susannah, Judith,—I am not sure I have given them all, but—

Q. Would Baruch be one?

A. Baruch, yes, the Epistle of Baruch.

They are in the King James Version and they have now [fol. 303] also been translated for the Revised Standard Version. We spent five years on that.

Q. Are they in the Jewish, the book known as the Holy Scriptures?

A. No.

Q. Do you know whether or not what the Jewish view is with regard to those books known as the Apocrypha?

A. I know only that they are not included in the Hebrew Canon of Holy Scripture.

Q. If you will excuse me just a minute, I want to look at your King James compared with mine.

Mr. Rhoads: There are a couple of them there, I think.

Mr. Sawyer: I will look at D-2.

By Mr. Sawyer:

Q. I know you are right and any lawyer that would presume to cross-examine you on the content of this is only asking for trouble, but I was surprised, sir, at your answer. My King James Version I thought had not contained those books that you mentioned. Probably they are indexed there under a general title that I can't fathom, but I don't see them in that one, either. I wonder if you could clear that up for us. I mean Maccabees One and Two, Tobit, Judith, Baruch and those books.

[fol. 304] A. Yes. These books are included in the Latin Vulgate. They are not included in the Hebrew Holy Scriptures. Because they were included in the Latin Vulgate they were translated as a part of the Bible by the Roman Catholics. The Protestants took various views with respect to them. Martin Luther translated them in his German Bible but instead of including them in either the Old Testament or the New Testament he put them between the Testaments with a notation to the effect that, "These are books that are useful," or something like that.

They were included in most of the translations that were made in England in the Sixteenth Century and they were included in the King James Version of 1611, and included for many years thereafter. But gradually publishers just began dropping them out, and that is what has happened.

There was controversy in the British and Foreign Bible Society and other places about it, but that is what has happened, that most Bibles that have been published in the Nineteenth Century and after just don't include them.

Q. So that they are not to be found, then, in the average—

A. In current King James Versions, no, they wouldn't be found. But they belong to the King James Version as was [fol. 305] published originally.

Q. I might ask you, sir, were there any Normans on the Committee for the New Revised Standard Version?

A. No.

Q. Do you know, sir, whether or not the Normans regard certain other books as being part of the Bible and actually the word of God, books not included in our King James Version?

A. I don't know.

Q. You do not know whether that is true?

A. I don't know.

Q. Dean, have you heard of the Book of Normans, sir?

A. I have a copy.

Q. But you do not know as to the status with which the Norman Church regards that book? Is that your answer?

A. Yes.

By Judge Kirkpatrick:

Q. Does the Norman Church regard itself as a Christian church?

A. I think so, though you are asking me something on which I don't have great knowledge.

Q. The Christian Church does not regard the Norman Church as having Christian faith, or is that also an open question?

A. I guess that is an open question, Your Honor.

Mr. Sawyer: Are you finished, Your Honor?

[fol. 306] Judge Biggs: Yes.

By Mr. Sawyer:

Q. Doctor, you testified I think it was at the end that you yourself were and are, I take it, an ordained Lutheran minister.

A. I was ordained in the General Synod of the Lutheran Church and maintained my ministry in that church until 1916. When I went to Yale I became a Congregationalist. I was dismissed—well, now, wait a minute, I don't mean to say that they dismissed me.

Q. I understand, sir.

A. I asked that they give me a letter of dismissal to the Congregational Association because it seemed best for me to maintain that affiliation as I took up this new work at Yale.

Q. Your actual theological training had been as a Lutheran?

A. Yes, and I am still a Lutheran in theology, Congregationally affiliated.

Q. I see, sir.

A. And are you familiar with the work known as The United Testimony on Faith and Life, reported at the Joint Union Committee to the Five Churches of the American Lutheran Conference, 1952?

A. No, I am not.

Q. You are not familiar with that, sir?

[fol. 307] A. No, I am not.

Q. I think I know your answer on this but I just wondered by any chance are you familiar, Doctor, with a study done by the Philadelphia Council of Churches called "Religion in Public Education"? This was done two years ago.

A. No, I am not.

Q. I thought you might possibly have known about it.

A. No. I have given myself so completely to the Revised Standard Version work in recent years that I haven't kept up on many things.

Q. I think that is all, Doctor.

Oh, you mentioned Lincoln and his reading of the Bible. I take it, Doctor, that to your knowledge he read it himself and he didn't have it read to him in school? Would that be correct?

A. Well, I don't know whether he had it read to him in school or not. In fact, I don't know how much schooling he had.

Q. Whether he went to school, yes, sir.

Thank you, that is all I have.

Redirect examination.

By Mr. Rhoads:

Q. Doctor, may I just ask you one final question. You have spoken about the certain values in the reading of the [fol. 308] Bible. Do you believe that the reading of the Bible is inspirational in character just as the reading of fine poetry would be inspirational in character?

Mr. Sawyer: I object to that, Your Honor. I don't know what "inspirational" means and I am not sure that we could define it if we stayed here all afternoon.

Judge Biggs: I think that is a point which might well be argued to the Court, Mr. Rhoads. I will sustain the objection.

Mr. Rhoads: I withdraw the question.

By Judge Biggs:

Q. Doctor, just as a matter of information for me personally, so to speak, I really probably shouldn't ask this question—but as I understand it, at the time of the King James Version and the appointment of the Committee, the persons who comprised that Committee were of the view that they were all Conformists, that they themselves were Conformists and that the Nonconformists were the group which had in effect caused a schism. Is that correct?

A. I think that is correct, sir.

Q. They considered themselves the orthodox group, the Conformists.

A. Yes. You have to realize, of course, that the Puritans were themselves a party within the Church of England and [fol. 309] were therefore Conformists. The more extreme Puritans felt that they had to break out, and they became Separatists.

Now, if we take the group that came here to America, the Pilgrims who came to Plymouth were Separatists, but the Puritans who came to Massachusetts Bay were conforming Puritans, that is, they did not separate from the Church of England.

Judge Biggs: Thank you. That has nothing to do with the case. I regret that I indulged my curiosity to that extent.

Anything else of the dean?

Mr. Rhoads: Nothing further, thank you.

Judge Biggs: Dean, thank you so much. It was a pleasure having you.

(Witness excused.)

Mr. Rhoads: If Your Honors please, Mr. Sawyer and I have solved I think one question which was raised just before adjournment, having to do with Dr. Boehm. I feel that neither of us should be in the position of stipulating on Dr. Boehm's testimony, and I have told Mr. Sawyer why. He agrees with me. We have therefore agreed among ourselves, subject to Your Honors' approval, that we would [fol. 310] relieve Your Honors of listening to his testimony; that we would take his deposition tomorrow morning and that we would agree that it might become a part of the record with the same force as if he had been here in person testifying, preserving to Mr. Sawyer all rights that he would have with reference to any testimony which I might have adduced from the witness.

Is that correct?

Mr. Sawyer: That is correct, sir.

Judge Biggs: It is so ordered.

Mr. Rhoads: Thank you, sir.

Judge Kraft: It would occur to me, however, one situation that should be regarded with respect to the depositions. So frequently it is the practice of counsel to reserve all objections to the trial. Since it is your apparent intention to submit this deposition as if the witness testified here, if there is any matter of substance to which objection is desired to be made and pressed at the time of argument, it is my view that that objection ought to appear clearly upon the record. We can then, if it is a matter of importance, rule on it before disposition and after argument. But if, as is the custom, it is reserved, it will be of no help to us.

Mr. Rhoads: I rather intended, sir, the former, Judge [fol. 311] Kraft, namely, that Mr. Sawyer would spread

in detail on the record of the deposition his objection and that unless such objection were so spread it would be considered as unobjectionable; unlike the usual deposition.

Judge Biggs: I think that would be the most precise way to do it. We will then have a very clear record of the objection.

Mr. Sawyer: I agree, sir, and of course I am mindful in making this arrangement that this gentleman is the State Superintendent of Public Instruction, he isn't called as an expert in theology or the like.

Mr. Rhoads: That is quite right.

Mr. Sawyer: You said he would be about ten or fifteen minutes, so that I anticipate that objections may very likely not arise out of that kind of testimony any more than it did this morning out of the school people.

Mr. Rhoads: I wouldn't think so.

Judge Biggs: Of course. Any objection which is so recorded at argument will be argued, and if the Court deems it to be irrelevant we will strike it.

Mr. Rhoads: Exactly, sir.

With Your Honors' permission, I just have two or three more matters.

Judge Biggs: Yes, certainly.

[fol. 312] Mr. Rhoads: In order to complete the record, sir, I would like to offer in evidence as Defendant's Exhibit No. 9 a portion of the report of Nathan C. Schaffer, Superintendent of Public Instruction of Pennsylvania during the year 1913, which was shortly after the passage of the Act involved in this case, in which is contained reference to the then superintendent's thinking with reference to the practice and what should be done under the then Act of Assembly which has been carried out.

I do not have the original, I can't find it. It seems to have departed from the Superintendent's office. But I have copied from the brief of the Attorney General of Pennsylvania by Mr. Stambaugh as amicus curiae in the Doremis case, with which Your Honors are familiar, and the excerpt that I am quoting is contained upon page 3 of Mr. Stambaugh's brief as amicus curiae in that case. We will endeavor to find an original if we can, but I have spoken to Mrs. Forer about it and I am sure that Mrs. Forer

agrees that if it were in Mr. Stambaugh's brief it is a proper excerpt.

Judge Biggs: Has Mr. Sawyer seen this.

Mr. Sawyer: I haven't seen it.

Mr. Rhoads: I don't think he has.

(The document was handed to Mr. Sawyer.)

Judge Biggs: Well, of course, if Mr. Sawyer will agree [fol. 313] I would doubt the necessity of going to the trouble of producing the original.

Mr. Sawyer: Well, I object to it being in the record, Your Honor. If Mr. Rhoads wants to put this in his brief or put it in a footnote I would be the last to come in and say he has adverted to something that isn't in the record. I think it is a matter of argument but I don't think it adds anything to the record as such.

Judge Biggs: May I see it?

Mr. Rhoads: Yes, sir.

Mr. Sawyer: I mean, we do not look behind the act of Legislature, let alone an opinion of a school superintendent a generation ago.

Mr. Rhoads: We are not looking behind it, we are referring to the administrative instructions of the then superintendent, which have conveyed the practice.

Mr. Sawyer: I fail to see what the relevancy would be of what the Superintendent of Schools in 1913 had to think about this practice.

Judge Biggs: Doesn't it amount to something like an administrative ruling, Mr. Sawyer?

Mr. Rhoads: That is it; that was my purpose, sir.

Mr. Sawyer: I would not think so, no, sir.

[fol. 314] Mr. Rhoads: There has been a great deal of argument, sir, and examination in the early stages of this case about practices and policies, and here we are dealing with the State Superintendent and a memorandum which he issued.

Judge Biggs: Have you had an opportunity to examine this?

Mr. Sawyer: Well, I have just now, and again it is a matter of weight, but this is a thing in which we purport to take a gentleman named Nathan C. Schaffer, who was Superintendent of Public Instruction in 1913, and after

spending half an hour here to qualify someone as an expert we are going to take this gentleman as to whether or not on certain questions Protestant, Catholic and Jew are in agreement. It is the substantive religious conclusions he reaches which I think are objectionable.

Judge Biggs: Well, speaking for myself, and I think for the other two members of the Court, I am in doubt about this but I think that we will follow the same practice as before and receive it subject to the motion to strike.

Mr. Rhoads: Thank you, sir.

Judge Biggs: Can you agree on authenticity?

Mr. Rhoads: I think there will be no problem.

[fol. 315] Mr. Sawyer: There will be no question.

Mr. Rhoads: I now offer this as Defendant's Exhibit No. 9, Your Honors, subject to your statement.

Judge Biggs: Let it be so marked.

(Excerpt from brief filed on behalf of Commonwealth of Pennsylvania, as Amicus Curiae, before the Supreme Court of the United States, October Term 1951, No. 9, in the Matter of Doremus v. Board of Education, et al., at pages 3 and 4, was marked Defendant's Exhibit 9.)

Judge Biggs: Mrs. Forer, did you want to say something about this?

Mrs. Forer: If the Court please, the Attorney General unfortunately was called into another courtroom before Judge Grim, but on his behalf I would like to say that the Commonwealth would like leave to file a brief.

Judge Biggs: Oh, we haven't come to that. We will certainly give you that amicus curiae. Wait until we come to that. I thought you were going to address yourself to this particular question. It is quite all right.

Mrs. Forer: We are agreed that this statement by Mr. Stambaugh was made. The effect or weight of it, of course, would be for the Court.

Judge Biggs: Certainly.

Is there anything else?

[fol. 316] Mr. Rhoads: Yes, there is, sir.

*In connection with Mr. Sawyer's offer of The Catholic Encyclopedia, I wish to offer under the same ruling that Your Honor made earlier with reference to Mr. Sawyer's offer a portion of The Catholic Encyclopedia contained in Volume II, page 543 and 544, which follows Mr. Sawyer's

first excerpt from The Catholic Encyclopedia in his exhibit where he refers to page 543. I don't want to burden Your Honors at this time of the day. I simply would like to offer it, subject to the same ruling that Your Honors made with reference to Mr. Sawyer's offer. I can read it now, if Your Honors want it.

Judge Biggs: No, you need not read it. So admitted subject to the same ruling. Mr. Sawyer I believe has no objection on that ground.

Mr. Sawyer: I have no objection, Your Honor.

(Excerpt from The Catholic Encyclopedia, Robert Appleton Company, New York, 1907, Volume II, pages 543, 544, was marked Defendant's Exhibit 10.)

Mr. Rhoads: By the same token, following Mr. Sawyer's document with reference to The Catholic Encyclopedia, Volume V, page 706, I wish to offer the excerpt which I am presenting, which immediately precedes Mr. Sawyer's offer and is contained in Volume V, page 706, with the [fol. 317]-same understanding, sir. I think that is all.

Judge Biggs: The identical ruling in respect to this offer also.

Mr. Rhoads: Thank you, sir.

(Excerpt from The Catholic Encyclopedia, Robert Appleton Company, New York, 1909, Volume V, page 706, was marked Defendant's Exhibit 11.)

Mr. Rhoads: I now formally move, if Your Honors please, to amend the answer in such manners and in such ways as may be indicated by the evidence as produced in the case.

Judge Biggs: Any objections, Mr. Sawyer?

Mr. Sawyer: No, sir.

Judge Biggs: So ordered.

Mr. Rhoads: Now, Your Honors, we have no further testimony from the defendant's point of view, and unless Mr. Sawyer has we would await your instructions as to what you now wish us to do.

Judge Biggs: You have nothing in rebuttal?

Mr. Sawyer: I have nothing, sir.

Judge Biggs: Very well. Let us leave it this way, then, the case is considered closed so far as the testimony is concerned, except for tomorrow's deposition.

[fol. 476]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
Civil Action No. 24,119

EDWARD LEWIS SCHEMP, SIDNEY GERBER SCHEMP, Individually and as Parents and Natural Guardians of ELLORY FRANK SCHEMP, ROGER WADE SCHEMP and DONNA KAY SCHEMP, 2549 Susquehanna Avenue, Roslyn, Montgomery County, Pennsylvania,

v.

SCHOOL DISTRICT OF ABINGTON TOWNSHIP, PENNSYLVANIA, c/o JAMES F. KOEHLER, 739 Wyndale Avenue, Abington Township, Montgomery County, Pennsylvania, O. H. ENGLISH, 1308 Highland Avenue, Abington Township, Montgomery County, Pennsylvania, EUGENE STULL, 1449 Abington Avenue, Glenside, Montgomery County, Pennsylvania, M. EDWARD NORTHAM, 343 Roberts Avenue, Glenside, Pennsylvania.

Before BIGGS, Circuit Judge, and KIRKPATRICK and KRAFT, District Judges.

OPINION OF THE COURT—Filed September 16, 1959

By BIGGS, Circuit Judge.

The suit at bar is brought by Edward Lewis Schemp and Sidney Gerber Schemp, individually and as parents and natural guardians of Ellory Frank Schemp, Roger Wade Schemp and Donna Kay Schemp, against School District of Abington Township, Montgomery County, Pennsylvania, O. H. English, Superintendent of Abington Township Schools, Eugene Stull, Principal of the Abington Senior High School, and M. Edward Northam, Principal of the Huntingdon Junior High School, located in Abington

Township. The suit is brought under 28 U.S.C. §§ 1343 and 2281, and was heard by a three-judge court pursuant to 28 U.S.C. § 2284. The parent plaintiffs complain on behalf of themselves as parents and as the natural guardians of Ellory, Roger and Donna, their minor children. At the time of the filing of the action, the older son, Ellory, was a student at the Abington Senior High School but graduated from that school prior to the trial, which was held during the summer recess. All the parties are in accord that the application for an injunction is moot as to him.¹

The complaint alleges that the Pennsylvania statute which provides for the reading of ten verses of the "Holy Bible" by teachers or students² is unconstitutional as an establishment of religion and a prohibiting of the free exercise thereof. The complaint makes a similar assertion in respect to the reading of the ten verses in conjunction with the practice of recitation³ in unison by students and

¹ We are not barred, however, from considering the evidence given by him, relevant to the practices in the schools of Abington Township.

² It will be observed that the Legislature of Pennsylvania did not define the term "Holy Bible". It did not, for example, make any differentiation between the King James Version of the Bible, frequently employed in the religious exercises of Protestant Churches and the Douay Version, the authorized Bible of the Roman-Catholic Church.

³ Section 1516 of the Public School Act of March 10, 1949, as amended, 24 P.S. Pa. § 15-1516, provides as follows: "At least ten verses from the Holy Bible shall be read, or caused to be read, without comment, at the opening of each public school on each school day, by the teacher in charge: Provided, That where any teacher has other teachers under and subject to direction, then the teacher exercising such authority shall read the Holy Bible, or cause it to be read, as herein directed.

"If any school teacher, whose duty it shall be to read the Holy Bible, or cause it to be read, shall fail or omit so to do, said school teacher shall, upon charges preferred for such failure or omission, and proof of the same, before the board of school directors of the school district, be discharged."

⁴ A recitation of the Lord's Prayer is, of course, not covered by the statute.

[fol. 478] teachers of the Lord's Prayer. The plaintiffs also assert, though not in the complaint, that the recitation of the Lord's Prayer in and of itself in the public schools of Abington Township is unconstitutional for similar reasons. The prayers at the end of each count of the complaint are substantially the same and seek declarations of unconstitutionality and the permanent enjoining of the practices complained of.

I

The parent plaintiffs are of the Unitarian faith and are members of a Unitarian Church in Germantown, Pennsylvania, which they attend regularly together with their three children, Ellory, Roger and Donna. The children also attend Sunday School regularly. Ellory was eighteen years of age at the time of the trial and had attended the Abington Senior High School from which he graduated in June of 1958. Roger was fifteen at the time of the trial and was an eighth grade student in the Huntingdon Junior High School in Abington Township during the academic year previous to the trial. Donna was twelve years old at the time of the trial and was also a student at the Huntingdon Junior High School and in the academic year preceding the trial had been in the seventh grade. All three children testified at the trial and their evidence proves that it was the practice of the various schools of the Township which

The prayer of the fourth count of the complaint is as follows: "WHEREFORE, plaintiffs [the parents] pray this court preliminarily, and after trial of this suit permanently, to enjoin the enforcement, operation, and execution of Section 1516 of the Act of March 10, 1949, P.L. 30, as amended, to declare said act unconstitutional; to declare as unconstitutional the practice of causing the Holy Bible to be read and of directing the saying of the Lord's Prayer at the Abington Township Senior High School and Huntingdon Junior High School, and to enjoin and declare unconstitutional the expenditure of funds for the purchase of Holy Bibles."

See the plaintiffs' brief, Requests for Findings of Fact and Conclusions of Law, and the transcript of the oral arguments.

An injunction against the expenditure of public funds for the purchase of "Holy Bibles" was not pressed by the plaintiffs and is treated as abandoned.

they attended to observe the opening period of each day with a brief ceremony consisting of the reading of ten [fol. 479] verses of the "Holy Bible", followed by a standing recitation in unison of that portion of the New Testament known as the "Lord's Prayer",* and that generally the ceremony was followed by the familiar Pledge of Allegiance to the Flag.

The testimony of the three children described a number of variations in the manner employed in the execution of this ceremony from school to school. The required ten verses were read either by the "home room" teacher or by students in the "home room", who either volunteered or were selected by rotation. An exception to these practices was recounted by Ellory Schempp who said that after the Senior High School had moved to a new building equipped with a public address system, the Bible was read over the loud speaker in each classroom following which a voice on the loud speaker directed the children to rise and repeat the Lord's Prayer.⁹ Donna Schempp testified that during the reading of the Bible a standard of physical deportment and attention of higher caliber than usual was required of the students. Edward L. Schempp, father of the minor plaintiffs, stated that the Bible reading, in the manner in which it was conducted, was "given a degree of authority . . . beyond normal school authority."

The three Schempp children and their father testified also as to items of religious doctrine purveyed by a literal

*Matthew 6:9. A directive for the recitation of the Lord's Prayer is included in the "Employees' Handbook and Administrative Guide," issued from the office of O. H. English, Superintendent of Abington Township Schools. The origin of the practice of reciting the Lord's Prayer coupled with Bible reading is obscure, although the practice has endured for over thirty years.

⁹ The Bible was read by one of the students enrolled in an elective course, described as the Radio and Television Workshop. W. W. Young, teacher of the course, testified that the students assigned to read the Bible on any particular day could employ the text of his own choosing, and also could select the particular ten verses to be read. In addition to the King James Version, the Douay Version and the Jewish Holy Scriptures were used.

reading of the Bible, particularly the King James Version,¹⁰ [fol. 480] which were contrary to the religious beliefs which they held and to their familial teaching.¹¹

Roger and Donna testified that they had never protested to their teachers or other persons of authority in the school system concerning the practices of which they now complain. In fact, on occasion, Donna had volunteered herself to read the Bible. The father, Edward Schempp, testified also that no complaint was lodged by him with the school authorities. Ellory Schempp, however, did complain of the practices, and demonstrated his objection first in November of 1956 by reading to himself a copy of the Koran while the Bible was being read, and refusing to stand during the recitation of the Lord's Prayer. He testified that his home room teacher stated to him that he should stand during the recitation of the Lord's Prayer, and that he then asked to be excused from "morning devotions". Afterwards he was sent to discuss the matter with the Vice-Principal and the School Guidance Counsellor. As a result, for the remainder of the year, Ellory spent the period given over for "morning devotions" each day in the Guidance Counsellor's office. At the beginning of the next academic year, which was Ellory's last in the Abington Township school system, he asked his then home room teacher to be excused from attendance at the ceremony. After discussing the matter with the Assistant Principal, that official told Ellory that he should remain in the home room and attend the morning Bible reading and prayer recitation period as did the other students.¹² This he did for the remainder of

¹⁰ Superintendent English testified that the King James Version of the Bible was purchased by the School, that one copy was issued to every school teacher in the District, and that no other versions of the Bible were ever purchased.

¹¹ Ellory Schempp testified that he did not believe in the divinity of Christ, the Immaculate Conception, or the concepts of an anthropomorphic God or the Trinity. All of these doctrines were read to him at one time or another during the course of his instruction at the Abington High School. The other two children and Edward L. Schempp, their father, testified similarly.

¹² The reason given by the Assistant Principal, according to Ellory's testimony, was "to show respect and . . . simply to obey

the year. The defendant Superintendent and the School Principals testified that no complaint, other than that of [fol. 481] Ellory Schenipp, had ever been received from any source. This evidence was uncontradicted.

We have the testimony of expert witnesses. Dr. Solomon Grayzel¹³ testified that there were marked differences between the Jewish Holy Scriptures and the Christian Holy Bible, the most obvious of which was the absence of the New Testament in the Jewish Holy Scriptures. Dr. Grayzel testified that portions of the New Testament were offensive to Jewish tradition and that, from the standpoint of Jewish faith, the concept of Jesus Christ as the Son of God was "practically blasphemous". He cited instances in the New Testament which, assertedly, were not only sectarian in nature but tended to bring the Jews into ridicule or scorn.¹⁴ Dr. Grayzel gave as his expert opinion that such material from the New Testament could be explained to Jewish chil-

a school rule; that matters of conscience and religion were not as important here as merely conforming to the school rule." Record of testimony, p. 28.

¹³ Dr. Grayzel graduated from the City College of New York City and Columbia University. He attended the Jewish Theological Seminary, was ordained a Rabbi and received a Doctorate of Philosophy from Dropsie College of Philadelphia, an institution of rabbinical, Semitic and Hebrew studies. The Jewish Publication Society of which Dr. Grayzel is the editor, is the publisher of an English translation of the Jewish Bible, *i.e.*, the Holy Scriptures according to the Masoretic Text, and is presently engaged in a retranslation from the Hebrew into English. As a member of the translation committee, Dr. Grayzel stated that he was familiar with the King James Version, the Revised Standard Version and both the Douay and the Knox Catholic Versions. Dr. Grayzel was undoubtedly qualified as an expert witness.

¹⁴ In particular, Dr. Grayzel cited the famous scene portrayed in Matthew 27: the trial of Jesus Christ before Pilate. He pointed out that as related in the Christian New Testament the Jews are portrayed as refusing to exchange Barabbas for Jesus but insisted upon crucifixion in spite of the attempts of Pilate to placate the mob. He cited the washing of hands by Pilate and then the verse 25: "Then answered all the people, and said, His blood be on us, and our children". Concerning this verse Dr. Grayzel stated that it had been the cause of more anti-Jewish riots throughout the ages than anything else in history.

dren in such a way as to do no harm to them. But if portions of the New Testament were read without explanation, they could be, and in his specific experience with children Dr. Grayzel observed, had been, psychologically harmful to the child and had caused a divisive force within the social media of the school.

Dr. Grayzel also testified that there was significant difference in attitude with regard to the respective Books of the Jewish and Christian Religions in that Judaism at [fol. 482] teaches no special significance to the reading of the Bible *per se* and that the Jewish Holy Scriptures are source materials to be studied. But Dr. Grayzel did state that many portions of the New, as well as of the Old Testament contained passages of great literary and moral value.

Dr. Luther A. Weigle, an expert witness for the defense,¹⁵ testified in some detail as to the reasons for and the methods employed in developing the King James and the Revised Standard Versions of the Bible. On direct examination, Dr. Weigle stated that the Bible was non-sectarian.¹⁶ He later stated that the phrase "non-sectarian" meant to him non-sectarian within the Christian faiths. Dr. Weigle stated that his definition of the Holy Bible would include the Jewish Holy Scriptures, but also stated that the "Holy Bible" would not be complete without the New Testament. He stated that the New Testament "conveyed the message of Christians." In his opinion, reading of the Holy Scriptures to the exclusion of the New Testament would be a sectarian practice. Dr. Weigle stated that the Bible was of great moral, historical and literary value. This is conceded by all the parties and is also the view of the court.

¹⁵ Dr. Weigle testified at length as to his experience and background in matters concerning theology. He is an ordained Lutheran Minister and is Dean Emeritus of the Yale Divinity School. He was and is Chairman of the Committee for the preparation of the Revised Standard Version of the Bible. He was Sterling Professor of Religious Education at Yale until he was made Dean Emeritus. There can be no doubt as to Dr. Weigle's qualifications as an expert.

¹⁶ Dr. Weigle, in defining "sectarian", stated: "A movement is sectarian when it is meant to establish the distinctive doctrine of some particular sect as opposed to the doctrine of other sects." Record at p. 252.

We can perceive no substantial contradictions in the testimony of any of the witnesses and we find the operative facts in the instant case to be as stated by them.

II

The plaintiffs contend that the practices, as described, of the Abington Township schools constituted an establishment of religion and a prohibiting of the free exercise thereof and are therefore a violation of rights guaranteed [fol. 483] by the First Amendment to the Constitution of the United States, made applicable to the States by the Fourteenth Amendment. *Murdock v. Pennsylvania*, 319 U.S. 105 (1943).

The defendants assert a position which is diametrically opposite to that of the plaintiffs. They contend in substance that a reading without comment of ten verses of the "Holy Bible" at the opening of each school day does not effect, favor or establish a religion or prohibit the free exercise thereof, that freedom of religion or of conscience does not include a right to practice one's beliefs or disbeliefs concerning the Bible by preventing others from hearing it read in the public schools. They contend also that reading without comment of ten verses of the "Holy Bible", of whatever version, is a substantial aid in developing the minds and morals of school children and that the State has a constitutional right to employ such practices in its educational program. They assert as well that the custom of saying the Lord's Prayer does not concern an establishment of religion nor violate the religious conscience of pupil or parent. Finally they contend that there is no compulsion upon the plaintiffs in respect to religious observances and that they have not shown that they have been deprived of any constitutional right.

III

Certain preliminary questions of law must be disposed of before we can come to the basic issues. These are: (1) Is there a substantial federal question presented for the consideration of this court? While it is obvious from our discussion of the merits that this court considers the fed-

eral questions presented to be substantial; a few words at this point to further demonstrate substantiality are proper. Insofar as we can ascertain neither the dimensions of the rights asserted here by the plaintiffs nor their claimed infringement have been presented for adjudication by the federal courts, and it follows that the federal question involved here is not foreclosed from our determination by [fol. 484] prior decisions. See *Louisville & Nash, R.R. Co. v. Melton*, 218 U.S. 36, 49 (1910). In the light of issues involving First Amendment liberties which the Supreme Court has considered in previous cases, some of which we shall refer to, we cannot say that these plaintiffs have not the right to demonstrate that their religious liberties have been violated.

(2) Is the doctrine of abstention applicable here, particularly in view of recent decisions of the Supreme Court? See *County of Allegheny v. Mashuda Co.*, — U.S. — (1959) (diversity jurisdiction); *Harrison v. NAACP*, — U.S. — (1959) (jurisdiction under 28 U.S.C. § 2284); *Louisiana Power & Light Co. v. City of Thibodaux*, — U.S. — (1959) (diversity jurisdiction). We conclude that the doctrine of abstention does not prohibit this court from proceeding to a determination of the issues involved. We begin with the proposition that a United States district court has the duty to adjudicate a controversy properly before it: *County of Allegheny v. Mashuda Co.*, *supra*. We believe that the limitations upon the discharge of this duty, essential elements of the abstention doctrine, are not applicable here. The Pennsylvania statute is brief and its mandate is clear. No issue of statutory construction is presented by the parties, and we cannot see that the statute lends itself to varying interpretations so that this court should withhold adjudication of the issues until the Courts of Pennsylvania have had the opportunity to construe the Act of March 10, 1949, in the light of state and federal constitutions. No interference with the administrative processes of the Commonwealth of Pennsylvania is involved here, nor by adjudicating the merits of the controversy do we create needless friction by unnecessarily enjoining state officials from executing domestic policies." See *County of Allegheny*

v. Mashuda Co., *supra*. If, as we believe, there are substantial rights involved, and if the merits compel a decision in favor of the plaintiffs, the resulting restraint on the [fol. 485] School District cannot issue "unnecessarily". See *Doud v. Hodge*, 350 U.S. 485, 487 (1956)."

(3) Do the children and the parents possess the standing to maintain the suit at bar? This is not a case where the jurisdictional issue of standing to sue is easily separated from consideration of the merits. Nonetheless, we can say that the alleged injury is one which, if proven, is direct as to them and not merely derivative from some injury to school children and their parents generally. The standing of the children is similar to that of the minor plaintiffs in *Brown v. Board of Education*, 347 U.S. 483 (1954), *Ellory* excepted, his case having become moot. As to the parents' standing to bring suit in their own right, we believe that they, as the natural guardians of their children, having an immediate and direct interest in their spiritual and religious development, are possessed of the requisite standing in that this interest is alleged to be encroached upon. Note the standing accorded to the parent plaintiffs in *Illinois ex rel. McCollum v. Board of Education*, 333 U.S. 203 (1948), and particularly in *Zorach v. Clauson*, 343 U.S. 306 (1952), n.4.

IV

We come now to the basic issues. It is clear that the plaintiffs allege in their complaint that the practice of reading the "Holy Bible" with or without the addition of the recitation of the Lord's Prayer violates their constitutional rights. They argue also that the compulsory recital of the Lord's Prayer, *et cetera*, standing alone, *or*, not in conjunction with Bible reading, is "sectarian". It might also be argued

"The plaintiffs' brief states: 'A practice of having a religious ceremony which consists of solely of the reading of a Bible and/or the mere recitation of the Lord's Prayer is sectarian. . . . If this issue were presented on the facts this court is constituted, would be entitled to adjudicate it. See note 8, *supra*, and *Two Guys from Harrison-Allentown, Inc. v. McGinley*, 357 F.2d 21 (3 Cir. 1959).'

with equal force that the compulsory recital of the Lord's Prayer, solely, standing alone, constitutes an establishment [fol. 486] of religion and a prohibiting of the free exercise thereof. But we do not and cannot reach issues relating to a ceremony which consists in the recital of the Lord's Prayer, Bible reading being omitted therefrom. Such a case is not before us. It could be argued, of course, that because the Bible verses were never read without being followed by the recital of the Lord's Prayer, the reading and the recital constitute a unitary whole which cannot be separated effectively for purposes of adjudication and only that unit, reading and recital together, is before us. The parties have not made such a contention and we do not think that it would be a valid one. The reading of the ten verses preceded the recital of the Lord's Prayer and was separated from it on every occasion by an interval of time, however slight. We conclude that we are entitled to pass on and do pass on (1) the constitutional issues presented by the reading of ten verses of the Bible, and (2) the constitutional issues raised by the reading of the Bible verses followed by the recital of the Lord's Prayer.

The Legislature prescribed the reading of the "Holy Bible". While many versions of the Bible exist, all are known primarily as books of worship. Their use in this connection comes first to mind. Inasmuch as the verses of the Bible address themselves to, or are premised upon a recognition of God, the Bible is essentially a religious work. To characterize the Bible as a work of art or literary or historical significance, and to refuse to admit its essential character as a religious document would seem to us to be unrealistic. The question is, accepting the "Holy Bible" as a religious document, regardless of the version involved, is its use in the manner prescribed by the statute violative of the terms of the First Amendment?

During the course of cross examination of Dr. Weigle, the following passage from his book, "The English New Testament," was quoted: "The message of the Bible is the central thing, its style is but an instrument for conveying the message. The Bible is not a mere historical document to be preserved. And it is more than a classic of English literature to be cherished and admired. The Bible contains the Word of God to man." Record at p. 270.

[fol. 487] The verses of the Bible, though they are of great literary merit, are embodied in books of worship. Regardless of the version, devoted primarily to bringing man in touch with God.¹⁹ If study of the Bible as an artistic work, a treasury of moral truths, or historical text can be separated from the espousal of doctrinal matters and religiousness, we should find no objection. But the manner in which the Bible is employed as required by the legislative fiat does not effect this division. The daily reading of the Bible, buttressed with the authority of the State and, more importantly to children, backed with the authority of their teachers, can hardly do less than inculcate or promote the inculcation of various religious doctrines in childish minds. Thus, the practice required by the statute amounts to religious instruction, or a promotion of religious education. It makes no difference that the religious "truths" inculcated may vary from one child to another. It also makes no difference that a sense of religion may not be instilled. In *Everson v. Board of Education*, 330 U.S. 1, 15 (1947), the Supreme Court stated, "The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another."²⁰ In our view, inasmuch as the Bible deals with man's relationship to God and the Pennsylvania statute may²⁰ require a daily reminder of that relationship, that statute aids all religions. Inasmuch as the "Holy Bible" is a Christian document, the practice aids and prefers the Christian religion.²¹

In *Illinois ex rel. McCollum v. Board of Education*, *supra*, where children were released from classes for a thirty to

¹⁹ See Note 18, *supra*.

²⁰ We use "may" since there are verses in the Bible which read along, teach moral truths independent of a God to man relationship.

²¹ Dr. Weigle said, as we have stated at an earlier point in this opinion, that the "Holy Bible" would be incomplete without the New Testament, and that the New Testament conveyed the message of Christians.

forty-five minute period of religious instruction each week by the minister, rabbi, or priest of their choice in school [fol. 488] classrooms; and where children not choosing to do this were required to go to some other place in the building in pursuit of their secular studies, the Supreme Court declared the practice violative of the First Amendment. In the case at bar the religious instruction is conducted, not by persons who visit the school building by invitation but by the teachers themselves, by mandates of the Legislature of Pennsylvania and of the Superintendent of Schools. See notes 3 and 8 *supra*. Thus, strikingly, has the Commonwealth of Pennsylvania supported the establishment of religion:

The reading of the Bible without comment, the defendants assert, permits each listener to interpret what he hears in the fashion he desires, and that therefore there is no inculcation of religion. This argument falls for two reasons. First, it either ignores the essentially religious nature of the Bible, or assumes that its religious quality can be disregarded by the listener. This is too much to ignore and too much to assume. The religiousness of the Bible, we believe, needs no demonstration. Children cannot be expected to sift out the religious from the moral, historical or literary content. Second, the testimony of the Schempps and Dr. Grayzel²² proves that interpretations of the Bible, dependent upon the inclinations of scholars and students, can result in a spectrum of meanings, beginning at one end of the spectroscopic field with literal acceptance of the words of the Bible, objectionable to Unitarians such as the Schempps, and ending in the vague philosophical generalities condemned by fundamentalists.²³ Of course children will interpret the Bible and will do so in terms of their religious instruction and in such a way as to make what they hear conform to their own religious commitments.

²² See especially note 14, *supra*.

²³ We note parenthetically the statement of the Court in *West Virginia State Bd. of Education v. Barnette*, 319 U.S. 624 (1943), speaking of the flag and the flag salute at p. 632-633: "A person gets from a symbol the meaning he puts into it, and what is one man's comfort and inspiration is another's jest and scorn."

generally those instilled by their parents. A contrary view seems to us to be untenable.

[fol. 489] It is clear from the evidence that the school children had to maintain, during the course of the morning exercises, a respectful mien more in keeping with a devotional or religious rite than with ordinary classroom instruction. The reading of the ten verses without comment was followed by a recital of the Lord's Prayer. The combination of the reading of the ten verses of the Holy Bible, followed immediately by the recitation of the Lord's Prayer, in our opinion gives to the morning exercises a devotional and religious aspect. Indeed, the morning exercises were referred to on frequent occasions by the students as "morning devotions". Counsel for the School Board referred to the ceremony as "devotional services". The addition of the Flag Salute to the ceremony cannot be deemed to detract from the devotional quality of the morning exercises. Our backgrounds are colored by our own experiences and many of us have participated in such exercises as those required in the Abington Township schools in our childhood. We deemed them then and we deem them now to be devotional in nature, intended to inculcate religious principles and religious beliefs.

The evidence adduced by Abington Township that several versions of the Bible and also the Jewish Holy Scriptures have been used proves only that the religion which is established is either sectless or is all-embracing, or that different religions are established equally. But none of these conditions, assuming them to exist, purges the use of the Bible as prescribed by the statute of its constitutional infirmities.²¹

Whether or not mere reading of the Bible, without comment, is a religious ceremony, a state supported practice of daily reading from that essentially religious text in the public schools is, we believe, within the proscription of the First Amendment. "[T]he First Amendment rests upon the premise that both religion and government can [fol. 490] best work to achieve their lofty aims if each is

²¹ Cf. the facts of *Illinois ex rel. McCollum v. Board of Education*, 333 U.S. 203 (1948).

left free from the other within its respective sphere." Illinois *ex rel. McCollum v. Board of Education*, *supra*, 333 U.S. at p. 212.

We conclude also, that the reading of the Bible as required by the Pennsylvania statute prohibits the free exercise of religion. The sanction imposed upon the school teachers is discharge from their offices if they fail to observe the requirements of the statute. It is true that no sanction is directly imposed upon the school children who fail to observe the provisions of the statute but it cannot be contended successfully that where a course of conduct is compelled for school teachers and school superintendents, that they will not use every effort to cause the children committed to their guidance and care to form an audience for the reading of the Bible according to the terms of the statute. Such compulsion may be disguised but would be effective nonetheless. Ellory Schenapp, in his last year at the Abington Senior High School was directed to attend the exercises by the Assistant Principal of his school, acting under the authority of his office. See note 12, *supra*. At one time he was directed by his home room teacher to stand during the recitation of the Lord's Prayer. The compulsion, on the other hand, may be subtle and thus particularly effective, in respect to children of tender years, such as Roger and Donna. "The law of imitation operates, and non-conformity is not an outstanding characteristic of children." Illinois *ex rel. McCollum v. Board of Education*, *supra*, at p. 227 (concurring opinion). The argument made by the defendants that there was no compulsion ignores reality and the forces of social suasion. Tudor v. Board of Education, 14 N.J. 31, 100 A.2d 867 (1953) at pp. 866-868. Moreover, attendance at school is required by the law of Pennsylvania of every child of school age under criminal penalties imposed on parents or other persons in *loco parentis*. 24 P.S. Pa. 13-1327 (Supp. 1959). 13 E333 [fol. 491] (1949). This mandatory requirement of school attendance puts the children in the path of the compulsion.

The pressures of the statute and the attitudes of both school officials and the teaching staff were directed to all

See note 3, *supra*.

of the children in the Abington Township schools referred to and not to the Schempps alone, but only the latter have rebelled. We think it is misleading to suggest that because only the Schempps have objected that the statute prescribes conduct which is not compulsory both as to teachers and pupils. Indeed the lack of protest may itself attest to the success and the subtlety of the compulsion. One can say with verity that in schools conducted in accordance with the legislative fiat, the reading of the "Holy Bible" is compulsory as to teachers and pupils.

In *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), school children were ordered by resolution of the Board of Education to salute the flag, and refusal to do so was regarded as an act of insubordination. The resolution was objected to by members of the sect of Jehovah's Witnesses, who refused to salute the flag considering it to be a "graven image". The resolution was struck down as unconstitutional. Such a compromising of religious conscience could not be countenanced. The daily reading of the Bible, operating upon the receptive minds of children compels them to listen with attention. This indoctrinates them with a religious sense. This under the circumstances at bar constitutes an interference with the free exercise of religion.

Even more clearly are the rights of the parents interfered with. Parents may well wish that their children develop a religious sensibility. If the faith of a child is developed inconsistently with the faith of the parent and contrary to the wishes of the parent, interference with the familial right of the parent to inculcate in the child the religion the parent desires, is clear beyond doubt. The right of the parent to teach his own faith to his child, or [fol. 492] to teach him no religion at all is one of the foundations of our way of life and enjoys full constitutional protection.

The statement of the Supreme Court in *West Virginia State Board of Education v. Barnette*, *supra*, at p. 630 that "[T]he refusal of these persons [the plaintiffs] to participate in the [flag salute] ceremony does not interfere with or deny rights of others to do so" does not compel a con-

trary result, as the defendants here urge. While others may have a right to salute the flag in public schools, we think, as our previous discussion demonstrates, that there is no corresponding right to have the Bible read in public schools in the manner required.

Having characterized the morning exercises in the Abington Township schools as a religious ceremony, it requires but little citation of authority to demonstrate that these exercises, conducted under the aegis of the Commonwealth of Pennsylvania, are violative of the terms of the First Amendment. What we have said in respect to *Illinois ex rel. McCollum v. Board of Education*, *supra*, and its application to religious instruction, applies with at least equal force to the conducting of the exercises as religious ceremonies.

We hold the statute in issue to be unconstitutional.

V

In addition to those set out in the foregoing opinion we make the following additional findings of fact and conclusions of law. Rule 52, Fed. R. Civ. Proc., 28 U.S.C.

FINDINGS OF FACT:

(1) Plaintiffs Edward Louis Schempp and Sidney Gerber Schempp are the parents and natural guardians of minor plaintiffs Ellory Frank Schempp, Roger Wade Schempp, and Donna Kay Schempp, residing in Montgomery County, Pennsylvania.

[fol. 493] (2) All of the defendants reside or are located within the jurisdiction of the United States District Court for the Eastern District of Pennsylvania.

(3) Minor plaintiff Ellory Schempp was a student at Abington Senior High School at the time this action was brought but graduated therefrom prior to the trial of this action.

(4) Minor plaintiff Roger Schempp was an eighth grade student in the Huntington Junior High School, Abington Township, during the academic year ending 1958 and he is presently a student in said school.

(5) Minor plaintiff Donna Schempp was a seventh grade student in the Huntingdon Junior High School, Abington Township, during the academic year ending 1958 and she is presently a student in said school.

(6) In each of said schools attended by the minor plaintiffs there is an opening period each day observed by the reading of ten verses of the Bible.

(7) The reading of the Bible as aforesaid each day is followed by a standing recitation in unison of that portion of the New Testament known as the Lord's Prayer.

(8) The attendance of all students in both of the aforesaid schools at the ceremony of the Bible reading and recitation of the Lord's Prayer is compulsory.

(9) The practice of the daily reading of ten verses of the Bible in the public schools of Abington Township constitutes religious instruction and the promotion of religiousness.

(10) The practice of the daily reading of ten verses of the Bible together with the daily recitation of the Lord's Prayer in the public schools of Abington Township is a religious ceremony.

[fol. 494]

CONCLUSIONS OF LAW:

(1) The court has jurisdiction of the parties and the subject matter of this litigation under Sections 1343, 2281, Title 28, United States Code. The instant three-judge court was properly convened pursuant to Section 2284, Title 28, United States Code and has before it substantial federal questions for adjudication.

(2) The practice of reading ten verses of the Bible each day in the public schools of Abington Township is pursuant to the mandatory provisions of Section 1516 of the Pennsylvania Public School Code of March 10, 1949, as amended.

(3) Section 1516 of the Pennsylvania Public School Code of March 10, 1949, as amended, violates the First Amendment to the United States Constitution as applied to the

states by the Fourteenth Amendment in that it provides for an establishment of religion.

(4) Section 1516 of the Public School Code of March 10, 1949, as amended, violates the First Amendment to the United States Constitution as applied to the states by the Fourteenth Amendment in that it interferes with the free exercise of religion.

(5) Said practice of compulsory mass recitation of the Lord's Prayer by students in the public schools of Abington Township violates the First Amendment to the United States Constitution as applied to the states by the Fourteenth Amendment in that it interferes with the free exercise of religion.

(6) The combined practice of Bible reading and mass recitation of the Lord's Prayer by students in the public schools of Abington Township violates the First Amendment to the United States Constitution as applied to the states by the Fourteenth Amendment in that said practice [fol. 495] constitutes an establishment of religion and an interference with the free exercise of religion.

A decree will be entered enjoining the practices complained of, in accordance with this opinion, and declaring Section 1516 of the Public School Act of March 10, 1949, as amended, 24 P.S. Pa. § 15-1516, unconstitutional.

John Biggs, Jr., U.S. Circuit Judge.

September 16, 1959.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 24110

EDWARD L. SCHEMP, et al.

v.

SCHOOL DISTRICT OF ABINGTON TOWNSHIP, et al.

FINAL DECREE—September 16, 1959

Plaintiffs, having filed their Complaint on February 18, 1958, and the defendants having appeared by their counsel, C. Brewster Rhoads, Esquire, on March 6, 1958, and a three judge court having been convened pursuant to Section 1343 of Title 28, United States Code, and a preliminary conference having been held in chambers attended by counsel for the plaintiffs and the defendants and it having been there agreed that defendants would answer on the merits and that hearing would be held for both preliminary and final injunction, and an answer having been filed by defendants on April 25, 1958, and a hearing having been held and testimony taken by the court on August 5 and 6, 1958, and November 25 and 26, 1958, and the deposition of Charles H. Boehm, Superintendent of Public Instruction of the Commonwealth of Pennsylvania, having, by stipulation, been taken by counsel without the presence of the court, and briefs having been filed and argument having been heard, now therefore, it is

Ordered, Adjudged and Decreed as follows:

The defendants are perpetually enjoined and restrained from reading and causing to be read, or permitting anyone [fol. 497] subject to their control and direction to read, to students in the public schools of Abington Township, Montgomery County, Pennsylvania, any work or book known as The Holy Bible, as directed by Section 1546 of

the Pennsylvania Public School Code of March 10, 1949, P.L. 30, as amended, or as part of any ceremony, observance, exercise or school routine; provided, that nothing herein shall be construed as interfering with or prohibiting the use of any books or works as source or reference material.

By the Court,

John Biggs, Jr., United States Circuit Judge, William H. Kirkpatrick, C. William Kraft, Jr., United States District Judges.

Dated: September 16, 1959.

[fol. 498]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

Present: Biggs, Circuit Judge, and Kirkpatrick and Kraft, District Judges.

ORDER AMENDING OPINION—September 21, 1959

And Now, to wit, this 21st day of September, 1959, it is

Ordered that the opinion filed herein on September 16, 1959, be and the same hereby is amended by striking out the whole of the Fifth Conclusion of Law appearing on page 19 of the opinion and by striking out the figure "(6)" also appearing on page 19 of the opinion and substituting in lieu thereof the figure "(5)".

By the Court,

John Biggs, Jr., United States Circuit Judge.

SUPREME COURT OF THE UNITED STATES

No. 297—October Term, 1960

SCHOOL DISTRICT OF ABINGTON TOWNSHIP;

PENNSYLVANIA, et al., Appellants,

vs.

EDWARD LEWIS SCHEMP, et al.

MANDATE OF THE SUPREME COURT OF THE UNITED STATES

Appeal from the United States District Court for the Eastern District of Pennsylvania.

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Pennsylvania; and was duly submitted.

On consideration whereof, It is ordered and adjudged by this Court that the judgment of the said United States District Court in this cause be, and the same is hereby, vacated with costs; and that this cause be, and the same is hereby, remanded to the United States District Court for the Eastern District of Pennsylvania for such further proceedings as may be appropriate in light of Act No. 700 of the Laws of the General Assembly of the Commonwealth of Pennsylvania, passed at the Session of 1959 and approved by the Governor of the Commonwealth on December 17, 1959.

It is farther ordered that the said appellants, School District of Abington Township, Pa., et al. recover from Edward Lewis Schempp, et al. One Hundred Dollars (\$100) for their costs herein expended and have execution therefor.

October 24, 1960

Clerk's costs \$100

[Vol. 527]

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
Civil Action No. 24119

EDWARD LEWIS SCHEMP, SIDNEY GERBER SCHEMP, individually and as parents and natural guardians of ELLORY FRANK SCHEMP, ROGER WADE SCHEMP and DONNA KAY SCHEMP

v.

SCHOOL DISTRICT OF ARINGTON TOWNSHIP, PENNSYLVANIA, JAMES F. KOEHLER, O. H. ENGLISH, EUGENE STULL and M. EDWARD NORTHAM

MOTION FOR LEAVE TO FILE A SUPPLEMENTAL PLEADING UNDER
RULE 15(d)—Filed January 4, 1961

And Now come the plaintiffs and move the Court for leave to file a supplemental pleading by way of amendment to the Complaint in the above-styled action in the following respects:

I.

By striking from the caption "Ellory Frank Schemp" and by deleting paragraphs 8 and 12 pertaining to Ellory Frank Schemp.

II.

By adding to paragraph 11 of the Complaint following the citation of the Act of the Pennsylvania legislature the words "as further amended by the Act of December 17, 1959, P. L. 700", deleting the text of the statute from paragraph 11 of the Complaint, and substituting the following text:

"At least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day. Any child shall be excused from

such Bible reading, or attending such Bible reading, upon the written request of his parent or guardian."

Henry W. Sawyer, III, Attorney for Plaintiffs.

[fol. 533]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

Present: Biggs, Circuit Judge, and Kirkpatrick and Kraft,
District Judges.

ORDER GRANTING LEAVE TO CHARLES H. BOEHM TO INTERVENE
AS A DEFENDANT—March 6, 1961

And Now, to wit, this 6th day of March, 1961, it is

Ordered that the motion of Charles H. Boehm, Superintendent of Public Instruction, Commonwealth of Pennsylvania, for leave to intervene as a defendant in the above entitled action under Rule 24 of the Federal Rules of Civil Procedure be and the same hereby is granted.

By the Court,

John Biggs, Jr., United States Circuit Judge, Specially Designated.

[fol. 534]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 24119

EDWARD LEWIS SCHEMP, SIDNEY GERBER SCHEMP, indi.
vidually and as parents and natural guardians of
ELLORY FRANK SCHEMP, ROGER WADE SCHEMP and
DOXNA KAY SCHEMP

v.

SCHOOL DISTRICT OF ABINGTON TOWNSHIP, PENNSYLVANIA,
JAMES F. KOEHLER, O. H. ENGLISH, EUGENE STULL and
M. EDWARD NORTHAM

Before Biggs, Circuit Judge, Kirkpatrick, Senior District
Judge, and Kraft, District Judge.

OPINION AND ORDER GRANTING LEAVE TO APPELLEES TO FILE
SUPPLEMENTAL PLEADING UNDER RULE 15(d)—June 22, 1961

On September 17, 1959 we entered a judgment declaring unconstitutional Section 1516 of the Pennsylvania Public School Code of March 10, 1949 as amended. See 177 F. Supp. 398 (1959). On November 12, 1959 the defendants appealed to the Supreme Court of the United States. On December 23, 1959 they filed a motion in this court pursuant to Rule 60(b), Fed. R. Civ. Proc., 28 U.S.C., for relief from the judgment entered following our opinion in this case. The motion was based on the fact that Act No. 700 of the Laws of the General Assembly of Pennsylvania, passed at the Session of 1959 (effective December 17, 1959), and approved by the Governor of the Commonwealth of Pennsylvania on December 17, 1959, amended the Act of March 10, 1949 (P.L. 30), relating to Bible reading in the public schools of Pennsylvania. The motion was denied by this court on June 9, 1960 for want of jurisdiction.

[fol. 535] On October 24, 1960 the Supreme Court handed down a *per curiam* opinion and order, 364 U.S. 298, vacating our judgment and remanding the case for such further proceedings as might be appropriate in the light of Act No. 700.

On January 4, 1961 a motion was filed by the plaintiffs for leave to file a supplemental pleading under Rule 15(d), Fed. R. Civ. Proc., 28 U.S.C., to amend the complaint by striking from the caption the words "Ellory Frank Schempp", and by deleting paragraphs 8 and 12, and by adding to paragraph 11 the words "as further amended by the Act of December 17, 1959 (P.L. 700)," and by deleting the text of the statute from paragraph 11 and substituting the following, "At least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day. Any child shall be excused from such Bible reading, or attending such Bible reading, upon the written request of his parent or guardian."

The defendants object to the filing of the proposed supplemental pleading on the ground that to allow it would be an abuse of our discretion. We conclude that a useful purpose would be served by permitting it to be filed, and that *prima facie* it states a cause of action cognizable by a three-judge court. Accordingly we will grant the plaintiffs' motion but in so ruling we desire to make it clear that we decide no more than that which we have stated.

John Biggs, Jr., Circuit Judge, William H. Kirkpatrick, Senior District Judge, William Kraft, Jr., District Judge.

Dated: June 22nd, 1961.

[fol. 536]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
Civil Action No. 24119

EDWARD LEWIS SCHEMP, SIDNEY GERBER SCHEMP, individually and as parents and natural guardians of ELLORY FRANK SCHEMP, ROGER WADE SCHEMP and DONNA KAY SCHEMP

v.

SCHOOL DISTRICT OF ABINGTON TOWNSHIP, PENNSYLVANIA,
JAMES F. KOEHLER, O. H. ENGLISH, EUGENE STULL and
M. EDWARD NORTHAM

ORDER—June 22, 1961

Present: Biggs, Circuit Judge, and Kirkpatrick, Senior District Judge and Kraft, District Judge.

And Now, to wit, this 22nd day of June, 1961, it is

Ordered that leave be and the same hereby is granted to the plaintiffs to file the Pleading designated as a "Supplemental Pleading Under Rule 15(d)", Fed. R. Civ. Proc., 28 U.S.C.; and it is

Further Ordered that the Supplemental Pleading referred to be and the same is hereby filed and defendants shall plead thereto within twenty (20) days.

By the Court,

John Biggs, Jr., United States Circuit Judge.

[fol. 537.]

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

[Title omitted]

ANSWER TO SUPPLEMENTAL PLEADING—Filed July 10, 1961

And Now comes School District of Abington Township, Pennsylvania, c/o James F. Koehler, O. H. English, Eugene Stull, and M. Edward Northam, defendants above named by their attorney and make answer to the Supplemental Pleading as follows; stating that wherever in this Answer the defendants allege that they do not know the truth or falsity of an allegation of the plaintiffs or where an allegation is denied for lack of sufficient information, it is the intent and meaning of the defendants that the averment of such lack of knowledge or information shall have the meaning that the defendants are without knowledge or information sufficient to form a belief as to the truth of the corresponding averment of the Supplemental Pleading.

[fol. 538]

First Defense

1. Paragraph 1 of the Supplemental Pleading consists of conclusions of law requiring no answer.

2. It is admitted that all of the defendants reside within the Eastern District of Pennsylvania.

3. Admitted.

4. Admitted.

5. Admitted.

6. Denied for lack of sufficient information.

7. Admitted.

8. Not answered, as Paragraph 8 has been deleted in Supplemental Pleading.

9. Denied; except that defendants admit that in the Abington Senior High School prior to the commencement

of classes a public address system which is broadcast into the classrooms is used for the purpose of making various school announcements, conducting the ceremony of the flag salute, and the reading of ten verses of the Holy Bible without comment by a student or teacher who has volunteered to read; and defendants further admit that immediately after such Bible reading the students in the classrooms, excepting those who have been excused because they do not desire to listen to such Bible reading, rise and may, if they so desire, say the Lord's Prayer.

10. Denied; but defendants admit that voluntary participation in the practices set forth in Paragraph 9 of this Answer has been carried out by defendants at the Abington Senior High School since December 17, 1959 and continues to the present time pursuant to the provisions of the Act of December 17, 1959, P. L. 700.

[fol. 539] 11. Admitted.

12. Not answered, as Paragraph 12 has been deleted in Supplemental Pleading.

13. Denied; except that defendants admit that the Abington Senior High School possesses, among the many books used by it for educational purposes, copies of the Holy Bible, some of which may have been purchased with funds of the School District of Abington Township, the amounts paid for such Holy Bibles being negligible.

14. Denied.

15. Admitted.

16. Denied. Roger Wade Schempp has concluded the eleventh grade and in September, 1961, will enter twelfth grade at the Abington Senior High School.

17. through 20. Denied, and defendants further allege that none of the plaintiffs is now a student at the Huntingdon Junior High School and therefore allege that the practices at such school are irrelevant and require no further answer.

21. Denied. Donna Kay Schempp has concluded tenth grade and in September, 1961, will enter the eleventh grade at the Abington Senior High School.

22. Defendants incorporate by reference paragraphs 11, 15, 17 and 20 of this Answer as though herein set forth in full.

23. Denied.

24. Defendants incorporate by reference paragraphs 7 to 23 inclusive of this Answer as though herein set forth in full.

25. Denied.

[fol. 540]

Second Defense

This Court should not adjudicate the constitutionality of Section 1516 of the Act of the Commonwealth of Pennsylvania of March 10, 1949, P. L. 30, as recently amended because the constitutionality of such amended statute is fairly open to interpretation and the Supreme Court of Pennsylvania has not been afforded a reasonable opportunity to interpret or determine the validity of such amended statute.

Third Defense

The statutory practice of Bible reading pursuant to the Act of December 17, 1959, P. L. 700, is voluntary in character. No pupil nor teacher may be compelled to participate therein. The plaintiffs, therefore, have no standing to bring this action since they are not, and do not allege that they are, being deprived of either their property or their absolute freedom to exercise their religious beliefs as their consciences may direct.

Fourth Defense

The Supplemental Pleading fails to state a claim against defendants upon which relief can be granted in that no violation of any rights, privileges or immunities secured by the Constitution of the United States or otherwise, is set forth.

Wherefore, defendants ask that the Supplemental Pleading be dismissed at plaintiffs' cost.

C. Brewster Rhoads, Attorney for Defendants.

[fol. 541]

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

ANSWER OF CHARLES H. BOEHM TO
SUPPLEMENTAL PLEADING—Filed July 11, 1961

And Now comes Charles H. Boehm, Superintendent of Public Instruction, Commonwealth of Pennsylvania, intervenor-defendant above named, by his attorneys, Anne X. Alpern, Attorney General, and John D. Killian III, Deputy Attorney General, and makes Answer to the Supplemental Pleading as follows: stating that wherever in this Answer the intervenor-defendant alleges that he does not know the truth or falsity of an allegation of the plaintiffs or where an allegation is denied for lack of sufficient [fol. 542] information, it is the intent and meaning of the intervenor-defendant that the averment of such lack of knowledge or information shall have the meaning that the intervenor-defendant is without knowledge or information sufficient to form a belief as to the truth of the corresponding averment of the Supplemental Pleading.

First Defense

1. Paragraph 1 of the Supplemental Pleading consists of conclusions of law requiring no answer.

2. It is admitted that all of the defendants reside within the Eastern District of Pennsylvania.

3. Admitted.

4. Admitted.

5. Admitted.

6. Denied for lack of sufficient information.

7. Admitted.

8. Not answered, as paragraph 8 has been deleted in Supplemental Pleading.

9. Denied; except that intervenor-defendant admits that in the Abington Senior High School prior to the commencement of classes a public address system which is broadcast into the classrooms is used for the purpose of making various school announcements, conducting the ceremony of the flag salute, and the reading of ten verses of the Holy Bible without comment by a student or teacher who has volunteered to read; and intervenor-defendant further admits that immediately after such Bible reading the students in the classrooms, excepting those who have been excused because they do not desire to listen to such Bible [fol. 543] reading, rise and may, if they so desire, say the Lord's Prayer.

10. Denied; except that intervenor-defendant admits that the practices set forth in paragraph 9 of this Answer have been in operation by the defendants at the Abington Senior High School since December 17, 1959 and continue to the present time.

11. Admitted.

12. Not answered, as paragraph 12 has been deleted in Supplemental Pleading.

13. Denied; except that intervenor-defendant admits that the Abington Senior High School possesses, among the many books used by it for educational purposes, copies of the Holy Bible, some of which may have been purchased with funds of the School District of Abington Township, the amounts paid for such Holy Bibles being negligible.

14. Denied.

15. Admitted.

16. Denied. Roger Wade Schempp has concluded the eleventh grade and in September, 1961 will enter twelfth grade at the Abington Senior High School.

17. through 20. Denied, and intervenor-defendant further alleges that none of the plaintiffs is now a student at

the Huntingdon Junior High School, and therefore alleges the practices at such school are irrelevant and require no further answer.

21. Denied. Donna Kay Schempp has concluded tenth grade and in September, 1961 will enter the eleventh grade at the Abington Senior High School.

22. Intervenor-defendant incorporates by reference paragraphs 11, 15 and 17 through 20 of this Answer as though herein set forth in full.

[fol. 544] 23. Denied.

24. Intervenor-defendant incorporates by reference paragraphs 7 to 23 inclusive of this Answer as though herein set forth in full.

25. Denied.

Second Defense

This Court should not adjudicate the constitutionality of Section 1516 of the Act of the Commonwealth of Pennsylvania of March 10, 1949 (P.L. 30), as recently amended, because the constitutionality of such amended statute is fairly open to interpretation and the Supreme Court of Pennsylvania has not been afforded a reasonable opportunity to interpret or determine the validity of such amended statute.

Third Defense

The statutory practice of Bible reading pursuant to the Act of December 17, 1959 (P.L. 700), is voluntary in character. No pupil nor teacher may be compelled to participate therein. The plaintiffs, therefore, have no standing to bring this action since they are not, and do not allege that they are, being deprived of either their property or their absolute freedom to exercise their religious beliefs as their consciences may direct.

Fourth Defense

The Supplemental Pleading fails to state a claim against defendants and intervenor-defendant upon which relief can

be granted in that no violation of any rights, privileges or [fol. 545] immunities secured by the Constitution of the United States or otherwise, is set forth.

Wherefore, intervenor-defendant asks that the Supplemental Pleading be dismissed at plaintiffs' cost.

John D. Killian III, Deputy Attorney General, Anne X. Alpern, Attorney General, Attorneys for Intervenor-Defendant.

[fol. 546]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

Philadelphia, Pa.

Excerpts From Transcript of Trial, October 17, 1961
—(Hearing on Amended Complaint)

[fol. 547] Before Hon. John Biggs, Jr., Chief Judge, Third Judicial District, Hon. C. William Kraft, Jr., District Court Judge, Hon. William H. Kirkpatrick, District Court Judge.

APPEARANCES

Present: Henry W. Sawyer, 3rd, Esq., and Wayland H. Elsbree, Esq., for the plaintiffs.

C. Brewster Rhoads, Esq., Percival R. Rieder, Esq., and Philip H. Ward, III, Esq., for the defendants.

Theodore R. Mann, Esq., for American Jewish Congress, Amicus Curiae.

Sydney C. Orlofsky, Esq., for Jewish Community Relations Counsel of Greater Philadelphia, Amicus Curiae.

John D. Killian, III, Esq., Assistant Attorney General of the Commonwealth of Pennsylvania, for the Commonwealth of Pennsylvania.

[fol. 550] EVIDENCE ON BEHALF OF PLAINTIFFS

EDWARD L. SCHEMP, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sawyer:

Q. Mr. Schempp, you are one of the plaintiffs in this case and you have previously testified; is that correct?

A. That's right.

Q. And at that time, Mr. Schempp, I believe you had three children in the schools of Abington Township. Do you have any children in those schools at this time?

A. One oldest child has moved on to college but two younger children are still in Abington High School.

Q. And did it come to your attention, Mr. Schempp, that the so-called Bible Reading Statute of Pennsylvania was amended?

A. I am aware of that.

Q. And what is your knowledge of it, that that amendment provides for?

Mr. Rhoads: That I object to. The statute speaks for itself.

Judge Biggs: I think that is correct.

Mr. Sawyer: Of course, this will have to be a leading [fol. 551] question, Your Honor.

Judge Biggs: Put a leading question.

By Mr. Sawyer:

Q. Were you aware of the provision which enabled you to have your children excused from the Bible reading ceremony?

A. I am aware of that.

Q. Did you consider whether or not you would elect to utilize that provision with respect to your two children?

A. We considered it very seriously.

Q. What conclusion did you come to?

Mr. Rhoads: That is objected to, sir. I have no objection to the mere statement of the fact that no excuse was proffered or requested on the part of the Schempp's, but I certainly object, sir, to a discussion as to the reasons which led for his doing or not doing what the Act provided.

Judge Biggs: Suppose they have a religious basis, Mr. Rhoads, as I assume they have; is he not entitled to explain the basis of his objections as they are founded in his religion?

Mr. Rhoads: It would seem to me, sir, that it is impossible for this plaintiff, having testified as he did before, to now say that a religious belief led me to refuse or not to elect [fol. 552] to do something that the act gives him an opportunity to do.

Frankly, it is a little difficult for me to see what his religious beliefs may have to do with whether or not he asked to have his children excused.

Judge Biggs: We think the form of the question is objectionable, Mr. Sawyer. This is a rather technical approach. Perhaps it is better to be a little bit technical at this stage. I am not entirely clear about it but I think he has already stated that he desired not to make use of the exception.

Has he stated that?

Mr. Sawyer: He said he considered it very carefully and my last question was what conclusion did he reach.

Judge Biggs: Well, let's find out what he did first or did not do first before we come to any question as to why he did or did not do it.

Mr. Sawyer: All right, sir.

By Mr. Sawyer:

Q. As the result of your consideration of that question, Mr. Schempp, what did you decide to do?

A. We decided the children should not have to pay the penalty of being labelled "odd balls."

[fol. 553] Mr. Rhoads: I object and ask that the answer be stricken out as totally irresponsible.

Mr. Sawyer: I will accede to that.

Judge Biggs: Let the answer be stricken out.

Not your conclusion; just what you decided not to do or to do, Mr. Schempp.

The Witness: We decided the children would stay in class.

By Mr. Sawyer:

Q. I will put the question that Mr. Rhoads may wish to object to.

Would you tell the Court, Mr. Schempp, the reasons that entered into that decision on your part?

Mr. Rhoads: That is objected to, sir. The witness has not even yet answered the specific question as to whether or not he requested a written excuse pursuant to the terms of the Act of 1959.

Mr. Sawyer: He did. He said he decided to let the children stay.

Mr. Rhoads: He decided to let them stay in school but he has not yet answered the question whether he did or did not request that they be excused.

Judge Kirkpatrick: He said stay in class, as I understood him. That is a little different from staying in school. [fol. 554] Didn't he say that?

Mr. Sawyer: It is easier to ask him and clear it up, to be frank about it.

Judge Kraft: I was going to suggest that.

By Mr. Sawyer:

Q. Did you or did you not request the children be excused from class?

A. We did not make that request.

Q. Now, the question then, to rephrase it, now pending, to which there is objection—

Judge Biggs: Don't answer it until we hear the objection.

By Mr. Sawyer:

Q. Mr. Schempp, what reasons entered into your decision with respect to deciding not to ask for your children to be excused from the Bible reading ceremony?

Mr. Rhoads: I object to that question, sir.
 Judge Biggs: The objection is overruled.

By Mr. Sawyer:

Q. Will you proceed, Mr. Schempp, with your reasons.

A. We originally objected to our children being exposed to the reading of the King James version of the Bible, which we felt was against our particular family religious beliefs, [fol. 555] and under those conditions we would have theoretically liked to have had the children excused. But we felt that the penalty of having our children labelled as "odd balls" before their teachers and classmates every day in the year was even less satisfactory than the other problem.

There were a number of things that we considered at the time.

The children, the classmates of Roger and Donna are very liable to label and lump all particular religious difference or religious objections as atheism, particularly, today the word "atheism" is so often tied to atheistic communism, and atheism has very bad connotations in the minds of children and many adults today. They consider Johnny as an atheist, therefore, he is un-American, he is anti-Red, he is immoral and other things.

Mr. Rhoads: If Your Honor please, I renew my objection to this type of argumentative and dispositive answer.

Judge Biggs: I think probably the point is conveyed that you desire to make, Mr. Sawyer.

Mr. Sawyer: Your Honor—

Judge Biggs: This is really a dissertation rather than testimony.

[fol. 556] Mr. Sawyer: I think in the McCollum case Mrs. Vashti McCollum at some length went into her—

Judge Biggs: Do you think this witness is competent to testify as he is now testifying?

Mr. Sawyer: Yes. I think as a parent, he is, sir.

Judge Kraft: I don't agree, Mr. Sawyer. There is a distinction.

You asked him what were his reasons for action or inaction. He began to tell you what they were, then he went off that track and began to testify to things he considered.

Whether those things that he considered were reasons for his action or inaction don't appear from his present answer. He may have considered a thousand things but acted for only two of the things for the reasons embodied in only two of a thousand things he considered.

I think the view of all of us is that you are entitled to have him testify to the reasons that impelled him to his action or inaction, but not to a description at length of all things that passed through his mind which played no part as reasons in his final conduct.

Mr. Sawyer: Your Honor, my thought was, of course, there would obviously have to be a limit in time alone and [fol. 557] this would be brief. My thought is that a reason standing alone is, or, put it a different way, a reason I suppose is inexorable from the factual assumption upon which the reason is based. And I think that that was really what he was doing at the very end here.

I think that perhaps that chain has been covered but I hope that the Court doesn't mean by its ruling that he can't further give any more of his reasons.

Judge Biggs: I think we will have to pass upon these questions as they are presented, Mr. Sawyer.

I think on this particular line he has gone as far as he should be permitted to go.

Mr. Sawyer: All right, sir.

By Mr. Sawyer:

Q. Mr. Schempp, were there any other reasons or considerations which impelled your decision which you have told us about?

A. There are the mechanics of being excused in school. If I may, it will only take a few minutes to say how this Bible reading is done.

Mr. Rhoads: If Your Honors please, I here again object. This witness is now testifying to practices in Abington High School not from his own knowledge, merely from his own interpretation of what must be the fact because of the new [fol. 558] Act.

Judge Kirkpatrick: That simply goes to the validity of his reason. He is giving his reason. Now, if it is based on

an assumption that isn't correct, that is a matter that can be shown later on. But all he is doing is saying what moved him.

Mr. Rhoads: But it seems to me, sir, to permit this witness to testify to assumptions based upon his interpretations of practices, without those practices being other than is presently in the record, it seems to me we are permitting a latitude here. However—

Judge Kirkpatrick: How can he give a reason— Suppose his actual reason was that he inquired and understood that they made the boy stand in the corner if he elected to walk out?

It is his reason just the same.

Mr. Rhoads: I have registered my objection, sir.

Judge Biggs: Will you answer the question, please?

Mr. Sawyer: Do you wish the stenographer to read you the beginning of your answer?

Judge Biggs: Read it back.

(The reporter read the record, as follows:)

[fol. 559] "A. There are the mechanics of being excused in school. If I may, it will only take a few minutes to say how this Bible reading is done."

The Witness: The children report at 8:15, just a minute or two afterwards the Bible reading begins with the children seated at attention. Then they stand and the Lord's Prayer—

By Judge Biggs:

Q: Did you say the children seated at attention?

A. During the Bible reading, yes, which is over the P.A. system at this particular time. Then the children stand and with the P.A. system leading them they repeat the Lord's Prayer; with no gap, still standing, they then give the flag salute, then they sit down and the announcements, which are very important to a child, immediately follow this. There is no gap in between where the child might come in or go out of the class without considerable trouble or time involved. And we felt that these, any—

Q. When you say "we"—speak for yourself. You felt.

A. I felt, that's right, my wife and myself felt, in considering it with my oldest son Ellory and my other children; that the experimenting that would be required to make these excuses from school would be very detrimental to the psychological well-being of our children.

[fol. 560] This is the mechanical part of it we are objecting to.

Q. Let me get the mechanical part straight. You say the children come to school when?

A. At 8:15 they report.

Q. And when does the school bell ring or start the daily session of the school?

A. That is the time, at 8:15.

Q. And then you say they sit behind their desks, did you say at attention?

A. At attention.

Q. And then what is the first thing?

A. Bible reading starts.

Q. Over the loudspeaker system?

A. Over the loudspeaker system; that's right.

Q. And that lasts for how long?

A. Long enough to read the ten verses of the Bible.

Q. And then when do they stand up?

A. And then they stand up immediately at the end of this.

Q. At the end of that they stand up. And then the Lord's Prayer is recited?

A. Recited with the P.A. system-leading.

Q. And then comes the salute to the flag?

A. While they are still standing.

[fol. 561] Q. And then they sit down again?

A. That's right.

Q. And then the day's announcements are read over the loudspeaker?

A. That's right.

Q. And that concludes—

A. That concludes the Home Room period, they call it. Although this is not always true. Sometimes—

Q. No, let's leave that alone for the time being.

Then after that ordinarily then they go to their respective classrooms?

A. The first class of the day, that's right.

Q. The first class of the day?

A. Yes. But this is not always followed. There are times when the announcements are made first because of some classes participating in special assemblies. You cannot say that they couldn't, our children could not stay in a room and say they would take their stop watch out and start at 8:20 and say now the Bible reading is over because it just varies on different days, and the announcements are read first followed by the Bible reading which may start at 8:20 or 8:25 even.

By Mr. Sawyer:

Q. Mr. Schempp, how could your children be excused from [fol. 562] the Bible reading and the Lord's Prayer without also being excused from the announcements and the salute to the flag?

Mr. Rhoads: That is objected to, sir. That seems to me to be a question that could be worked out through the administrative facets of the school system and I don't think this witness is in a position to testify.

Judge Biggs: We sustain the objection.

By Mr. Sawyer:

Q. Mr. Schempp, are you familiar with any various modes of punishment which may from time to time be used in the Abington High School?

A. In Abington and in other schools which our children have attended in Abington High School, one of the penalties, common penalty, is that bad boys stand in the hall during classes. We felt that this was a reason to be considered, that they would have the stigma of being—this is a form of punishment.

Mr. Sawyer: Cross-examine.

Cross examination.

By Mr. Rhoads:

Q. Mr. Schempp, have you ever heard of any child of the Abington School District being placed in a standing position outside of the schoolroom for not listening to Bible reading, for not listening or attending Bible reading? I [fol. 563] would prefer to say attending Bible reading.

A. No.

Q. Mr. Schempp, when did you last attend the opening exercises of any of the schools of Abington School District?

A. I have not attended them, sir.

Q. You have testified before in this case, have you not?

A. That is right.

Q. Have you attended any school session of Abington School District since last testifying in this case?

A. I have not.

Q. So that everything you have testified to here regarding the Abington School District practices of Bible reading and prayer saying is based upon hearsay given to you by someone else; is that correct?

A. By my children.

Q. By your children. And your children have testified in this case before, have they not?

A. That is right.

Q. Since the passage of the Act of 1959, with which you are familiar, the new Act I will call it, regarding Bible reading, have you conferred with the Superintendent of Schools in Abington Township about it?

A. I have not for the reasons I gave previously.

Q. Have you discussed with any administrative officer of [fol. 564] the School District of Abington Township methods by which excuses from Bible reading may be given to the parents or the guardians of children?

A. Parents or guardians of our children?

Q. Parents or guardians of children.

A. No, I have not discussed the problem at all with them.

Mr. Rhoads: No further questions, sir.

If Your Honors please, may I just protect the record by moving to strike the testimony of Mr. Schempp for the reasons which I have heretofore suggested to Your Honors.

Judge Biggs: We assume that Mr. Sawyer will follow this with some testimony which will take a portion of what this witness has said out of the class of hearsay evidence.

Mr. Sawyer: I wasn't going to.

Judge Biggs: If he doesn't follow that it will, of course, have to be stricken.

Mr. Sawyer: Do I understand Mr. Rhoads is pressing the hearsay objection or the objection that he previously made?

Mr. Rhoads: I am pressing all objections which I made as a matter of record, sir.

Mr. Sawyer: Well, he didn't make a hearsay objection.

[fol. 565] Judge Biggs: The Court's ruling is the motion will be taken under consideration; if necessary, we will act upon it and strike such portions of it as we deem necessary.

Mr. Sawyer: Roger Schempp.

ROGER WADE SCHEMP, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sawyer:

Q. Now, you are Roger Schempp, not Ellory?

A. That's right.

Q. Because you are as big as Ellory was when we were here last time.

Roger, where do you go to school?

A. Abington Senior High School.

Judge Biggs: May the Court remark that this is one of the most remarkable growths the Court has seen I think in 40 years.

Mr. Sawyer: I want to remind the Court that there was a case once called Jarndyce v. Jarndyce.

Judge Biggs: Well, we hope we will not have grandchildren here.

By Mr. Sawyer:

Q. Roger, what class are you in?

[fol. 566] A. I am in Junior class at the moment.

Q. You were here present in the courtroom just a moment ago and I take it that you heard your father testify and describe the routine that was followed each morning in Abington Township High School?

A. Yes, I did.

Judge Biggs: Keep your voice up, please, Roger.

The Witness: Yes, sir.

By Mr. Sawyer:

Q. Have you been present in class during those events in the morning?

A. Yes, I have.

Q. And did your father correctly describe the routine that was followed?

A. Yes, he did.

Mr. Sawyer: Cross-examine.

Mr. Rhoads: No questions.

Mr. Sawyer: Thank you very much.

MOTION TO STRIKE TESTIMONY AND COLLOQUY THEREON

Mr. Sawyer: Your Honor, with that the plaintiff rests upon the testimony previously offered in this case, which is of record, and the testimony offered today.

Mr. Rhoads: If Your Honors please, I now formally move to strike all of the testimony of the plaintiff in this case [fol. 567] which was offered during the trial of the case pertaining to the former Act which has been superseded by the Acts of 1959. I refer specifically to the testimony in this case of Ellory Schempp, of Donna, of Roger, taken at the dates indicated by the docket in this case regarding the Bible reading under the Act of 1949 which has now been superseded by the Act of 1959.

I also move that the testimony of Dr. Grayzel, heretofore taken in this case on behalf of the plaintiff, be stricken from the record as pertaining to a cause of action unrelated

to the present cause of action which involves the constitutionality of a new Act of Assembly relative to the voluntary reading of ten verses of the Holy Bible without comment and providing for means, for an excuse of children from attendance at those ceremonies.

Mr. Sawyer: May I just say a word on that, Your Honor?

Judge Biggs: Just a moment.

Mr. Sawyer: I didn't know whether you were conferring or waiting for me, sir. I am sorry.

Judge Biggs: We will hear you, Mr. Sawyer, now.

Mr. Sawyer: Your Honor, it seems to me that Your Honors have decided this. This is merely the same mootness [fol. 568] argument on which we had numerous arguments.

Judge Biggs: Is this the same? What is there to show, for example, here in the record that the Bible reading today or yesterday was the same under the new Act that it was under the old?

Mr. Sawyer: Well, Your Honor, it seemed to me that unless there is some evidence to show that it is changed—Mr. Schempp spoke of the practice continuing and Roger confirmed what he said.

Judge Biggs: I didn't so understand his testimony. He spoke of Bible reading.

Mr. Sawyer: Yes.

Judge Biggs: He said the "Bible reading." Now, what was he referring to?

Mr. Sawyer: Your Honor, it seems to me that you have this situation procedurally. Your Honors' injunction forbidding it at the application of the defendants was stayed. It would appear that the defendants wish to continue, at least they so represented by such an application; the practice that they had done prior to this Court's injunction, and that was stayed pending appeal, and that stay is still continuing because it has never been lifted. And the practice, unless the defense comes forward and tells us that it is different, continues.

[fol. 569] Judge Kraft: What is there which creates the presumption of the continuity of anything of that sort?

Mr. Sawyer: Well, Your Honor, the statute is after all what is attacked here and we, I suppose, could attack the statute and show that on any occasion ever our people had been harmed by it and that would be sufficient unless there were evidence that for some reasons they weren't doing it.

Now, I don't see how they could not do it. The statute directs them to do it. The statute, Mr. Rhoads, always we have this argument, he said it is a voluntary Bible reading statute. It is not voluntary at all. It says, "shall," mandated by the Legislature, "it shall be read."

Judge Biggs: Quite aside of whether or not the statute is on the books, you need more than that to sustain the charge of unconstitutionality here. You have to show some sort of action under the statute, don't you?

Mr. Sawyer: Yes, sir. No question about it; to have the standing you do, yes, sir.

Judge Biggs: What is the action here that you complain of?

Mr. Sawyer: Exactly what the complaint alleges. Your Honor, and the answer admits, that ten verses of the King [fol. 570] James version of the Bible are read daily in the schools of Abington Township.

Judge Biggs: Now, will you show me where the answer admits it?

Mr. Sawyer: Yes, sir. Why, I believe—

Judge Biggs: Are you going back to the original answer, Mr. Sawyer?

Mr. Sawyer: No, sir.

Judge Biggs: Is this the original answer?

Mr. Sawyer: No, sir. This is the answer we now have before us.

Judge Biggs: It is the answer to the supplemental pleading.

Mr. Sawyer: The supplemental pleading.

Judge Biggs: First of all, what does the supplemental pleading aver in that respect?

Mr. Sawyer: Excuse me!

Judge Biggs: What does the supplemental pleading aver?

Mr. Sawyer: It avers, Your Honor, it is exactly the same as the original complaint, that ten verses of the Holy

Bible are read each morning, and the answer in Paragraph 9 says inter alia—

[fol. 571] Judge Biggs: Denied except that the defendants admit—

Mr. Sawyer: Yes, sir.

Judge Biggs: What is the allegation of 9?

Mr. Sawyer: Of 9?

Judge Biggs: Yes.

Mr. Sawyer: That it is read, Your Honor.

Judge Biggs: No, not the original, the supplemental complaint.

Mr. Sawyer: Yes, sir. But the supplemental complaint, you see, was one which merely changed the paragraph to be changed, so it is the original—

Mr. Rhoads: I think I have here for Your Honors—Mr. Sawyer, maybe I can help you here—9 is, the response is as follows—

Judge Biggs: I have the response; I wanted the allegation.

Mr. Sawyer: 10 verses of the King James version of the Holy Bible, either the old or new Testament thereof, are read by a student over a public address system which is broadcast into all the classrooms.

That is 9A.

9B, Your Honor, is:

[fol. 572] Immediately thereafter the students in the entire school—and this says “including Ellory Frank Schempp,” but there is a corresponding one for each child—are directed over the said public address system to rise and say the Lord’s Prayer.

That paragraph, Your Honor, is in both the original and amended and supplemental pleading.

Judge Biggs: All right. Now we come to the answer, and you are reading from page 2.

Mr. Sawyer: Yes, sir.

Judge Biggs: And 9.

Mr. Sawyer: Yes, sir.

Judge Biggs: “Denied,” it says, “except the defendants admit that in the Abington Senior High School prior to commencement of classes—”

In what way does the answer differ from the allegation of the amended complaint?

Mr. Sawyer: I don't see that it does, Your Honor. It is a denial but the admission which is for our purposes I think right here at this moment critical is that they are reading the Bible, ten verses of the Holy Bible, without comment.

The words "without comment" appears to be a difference, Your Honor, for one thing.

[fol. 573] Judge Biggs: Just a moment, please.

The Court will reserve judgment on your motion. We will reserve decision on your motion at the present time.

Mr. Rhoads, is there any evidence that you desire to offer?

Mr. Rhoads: May I make one further objection, sir?

I would like to include in my motion something which inadvertently I omitted, mainly, a motion to strike the testimony of Edward Lewis Schempp, father, at the prior hearing in this case. In other words, I included, I think, Roger, Donna and Ellory as well as Grayzel, and I hope Your Honors will permit me to include the name of Edward Lewis Schempp in the old hearing.

Judge Biggs: We understand your motion to be so amended.

Mr. Rhoads: Yes. And, secondly, may I merely correct as a matter of record Mr. Sawyer's, I think, inadvertent statement when he indicated in his argument to Your Honors that there had been a stay in this situation.

I think Your Honors will recall that the action of the Supreme Court involved a vacation of the original judgment in this case and a remand to Your Honors for such further proceedings as Your Honors might deem necessary.

[fol. 574] Judge Biggs: I think what Mr. Sawyer was referring to was the stay granted by this Court.

We did grant a stay, didn't we?

Mr. Rhoads: Exactly. But I think then he said that there is presently a stay in effect. That is what I understood him to say, as being an argument why no further testimony need be taken. I so interpreted it but I think Your Honors recall that the judgment ultimately was vacated.

Mr. Sawyer: Your Honor, I would like to add to the record one paragraph of the answer of the intervenor-defendant, he being the Superintendent of Public Instruction, which Your Honors will recall was permitted to intervene as actually a party defendant in the action.

Judge Biggs: Who was?

Mr. Sawyer: The Superintendent of Public Instruction.

Judge Biggs: Yes, he was permitted, as I remember, to actually intervene. I think we made an order, did we not?

Mr. Rhoads: He is a defendant, sir.

Mr. Sawyer: He is now a defendant.

Judge Biggs: Yes.

Mr. Sawyer: And, therefore, in accordance with that, he very properly answered the supplemental pleading.

[fol. 575] Judge Biggs: Yes, I have his answer here.

Mr. Sawyer: Paragraph 9, you will note, Your Honor—

Judge Biggs: That is Mr. Boehm.

Mr. Sawyer: That's right.

Well, I shall not read it, you have it, it is part of the record, except to point out that there again he says that it is read, and that along with the flag salute, making various school announcements over the public address system.

Judge Biggs: What do counsel understand with respect—I wish you would instruct me, an Appeals Court judge—with respect to pleadings in Pennsylvania in the Federal Court? I have always understood from my practice or knowledge of the Delaware and New Jersey pleadings that well-pleaded and admitted allegations were admissions; that you didn't have to put your pleading in evidence, so to speak, by reading it.

Mr. Sawyer: I think not.

Mr. Rhoads: I certainly would never raise that question before Your Honors in a proceeding of this kind. But I do suggest to Your Honors that Paragraph 9 of the answer to the supplemental pleading is, first, a denial, and that is a denial of the specific averments made by complainant; but [fol. 576] then we say except that certain things are being done. And, of course, we admit that the Holy Bible is currently being read at the Abington schools, but Your Honors will see that the very gravamen of this issue, which is the

effect of excuse provisions in the Act, is preserved in the last sentence of Paragraph 9 of our answer, where we say, "And defendants further admit that immediately after such Bible reading the students in the classroom, excepting those who have been excused because they do not desire to listen to such Bible reading, rise and may, if they so desire, say the Lord's Prayer."

"That is the answer that we have filed in this case, and I certainly think, sir, that if there is any proof it is to be forthcoming, as to a constitutional injury or an injury coming within the purview of unconstitutionality on the part of any of these plaintiffs by virtue of the impact of this new Act, it is up to them to say so and to prove it. And I suggest very emphatically to Your Honors as this record now stands, they have not established any such impairment of any constitutional rights.

Judge Kraft: I understand from something you said a moment ago, Mr. Rhoads, that counsel agree that whatever facts are pleaded in the supplemental pleading and admitted [fol. 577] by the answer may be so taken by the Court.

Mr. Rhoads: I would have no objection to that, sir, because I think it would be unfair to Your Honors for me to take any such position.

And I take it, sir, that that particular observation, Judge Kraft, did apply to the question, because I would like to get my thinking correct, of the fact of the continuance of Bible reading. There is no question that the Bible reading is continued and has been continued in Abington School District.

Judge Biggs: In the same fashion as before.

Mr. Rhoads: The same general fashion with which we are familiar. I don't, of course, agree to the observations made by Mr. Schempp, but if the fact of the Bible reading is a material fact here, which obviously it is, it is being read, sir. There is no question. And I take it that that is the impact of Your Honor's request to me.

Of course, the same thing would apply to my exception which provides for those who had been excused.

Judge Biggs: I think we understand the position here.

Mr. Rhoads: Thank you, sir.

Judge Biggs: Have you any evidence to offer?

Mr. Rhoads: I have no further evidence and I stand [fol. 578] on the record with my motion before Your Honors, and Your Honors have reserved, I believe, judgment on my motion.

Judge Biggs: Yes.

[fol. 590]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
Civil Action No. 24119

EDWARD L. SCHEMP, et al.

v.

SCHOOL DISTRICT OF ABINGTON TOWNSHIP, et al.

OPINION OF THE COURT—February 1, 1962

By Biggs, *Circuit Judge*.

- For a full understanding of the problems presented by this case it will be necessary to read our earlier opinions at D.C. 1959, 177 F. Supp. 398; D.C. 1959, 184 F. Supp. 381; and D.C. 1961, 195 F. Supp. 518. To recapitulate events briefly we state that the suit at bar was brought on February 14, 1958, by Edward and Sidney Schempp as parents and natural guardians of the minor plaintiffs, Ellory, Roger and Donna, all residents of Abington Township, Pennsylvania, against the School District of Abington Township, against the Principal of the Abington Senior High School and the Principal of the Huntingdon Junior High School, in Abington Township. The purpose of the suit was to have this court declare unconstitutional Section 1516 of the Pennsylvania Public School Act of March 10, 1949, as it then existed, 24 P.S. § 15-1516. Section 1516 provided for the compulsory reading of ten verses of the "Holy Bible" at the opening of each public school in the Commonwealth of Pennsylvania on each school day by teachers or

by students and prescribed a specific penalty to be imposed on a teacher in case of failure to obey the mandate of the statute.

The Schempps, who are Unitarians, objected to the Bible reading pursuant to the statute on the grounds, among [fol. 591] others, that this constituted an establishment of religion and prohibited the free exercise of religion in violation of the First Amendment. We agreed with these contentions and on September 17, 1959, entered a judgment declaring the statute unconstitutional and enjoined its enforcement. See D.C. 1959, 177 F. Supp. 398. The defendants appealed to the Supreme Court of the United States. Thereafter Act No. 700 was passed by the General Assembly of Pennsylvania and became effective on December 17, 1959. Thereby the Act of March 10, 1949 was amended. The amending Act provides as follows: "At least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day. Any child shall be excused from such Bible reading, or attending such Bible reading, upon the written request of his parent or guardian." See 24 P.S. § 15-1516 (Supp. 1961). Following the enactment of this amendment and certain steps which need not be set out here, the Supreme Court on October 24, 1960, handed down a *per curiam* opinion and order, 364 U.S. 298, vacating our judgment and remanding the case for such further proceedings as might be appropriate in the light of the amending statute.

On January 4, 1961, the plaintiffs moved for leave to file a supplemental pleading under Rule 15(d), Fed. R. Civ. Proc., 28 U.S.C. The supplemental pleading, really a supplemental complaint, provides only for the substitution in the original complaint of the new citation and text of the amended statute in place of the citation and text of the statute as it was prior to amendment and the elimination of all the paragraphs in the complaint relating to Elloy Schempp, he having graduated from the Abington Senior High School. The amendments have been allowed and the supplemental pleading has been filed. For a more detailed description of what took place see D.C. 1959, 184 F. Supp. [fol. 592] 381, and D.C. 1961, 195 F. Supp. 518. The Superintendent of Public Instruction of the Commonwealth of

Pennsylvania has been permitted to intervene as a party defendant.

Hearing has been had on the amended pleadings. Evidence has been taken. The case has been fully briefed and argued. It is now ripe for decision.

It is unnecessary to review the evidence taken at the former hearings or to repeat here the findings of fact set out in our first opinion, reported at D.C. 1959, 177 F. Supp. 398 *et seq.* The present Bible reading statute permits a student to be excused from attending Bible reading upon the written request of his parent or guardian. The statute itself contains no specific penalty to be imposed upon the teacher who fails to observe its mandate as was the case prior to the 1959 amendment. The teacher, however, who refuses or fails to obey the mandate of the amended statute may have his contract of employment terminated pursuant to 24 P.S. § 11-1122 (Supp. 1960). This is a provision of the Pennsylvania Public School Act which speaks strongly for itself and is set out in the margin.¹

The procedure followed in the Abington Senior High School, following the amendment of Section 1516, did differ [fol. 593] somewhat from that which was in effect prior to the amendment. We describe it briefly. The children attending the High School, Roger and Donna included, reported to their "homerooms" at 8:15 A.M. and a few minutes thereafter the Bible reading began with each pupil seated "at attention". The Bible reading consists of reading, without comment, over a loud speaker ten verses of the King James Version of the Bible. Then the children stood and repeated, with the public address system leading them, the Lord's Prayer. Next, still standing, the children gave the Flag Salute. They then sat down. Announcements were

¹ 24 P.S. § 11-1122 (Supp. 1960) provides: "The only valid causes for termination of a contract heretofore or hereafter entered into with a professional employe shall be immorality, incompetency, intemperance, cruelty, persistent negligence, mental derangement, advocacy of or participating in un-American or subversive doctrines, persistent and wilful violation of the school laws of this Commonwealth on the part of the professional employe . . ." See also Board of Public Education, School District of Philadelphia v. Bernard August, — Pa. —, — A.2d —, (1962).

made and when the announcements were completed the students went to their classrooms for the first classes of the day.

Edward Schempp, the children's father, testified that after careful consideration he had decided that he should not have Roger or Donna excused from attendance at these morning ceremonies. Among his reasons were the following. He said that he thought his children would be "labeled as 'odd balls'" before their teachers and classmates every school day; that children, like Roger's and Donna's classmates, were liable "to lump all particular religious difference[s] or religious objections [together] as 'atheism'" and that today the word "atheism" is often connected with "atheistic communism", and has "very bad" connotations, such as "un-American" or "anti-Red", with overtones of possible immorality. Mr. Schempp pointed out that due to the events of the morning exercises following in rapid succession, the Bible reading, the Lord's Prayer, the Flag Salute, and the announcements, that excusing his children from the Bible reading would mean that probably they [fol. 594] would miss hearing the announcements so important to children. He testified also that if Roger and Donna were excused from Bible reading they would have to stand in the hall outside their "homeroom" and that this carried with it the imputation of punishment for bad conduct.

The plaintiffs seek to enjoin the enforcement of Section 1516 as now amended and to have it and the practices carried on pursuant to it at the Abington Senior High School declared unconstitutional as an establishment of religion and as an interference with the free exercise of religion. The defendants maintain, among other things, that the plaintiffs have failed to prove that they have sustained any injury to a constitutionally protected right and that therefore they are without standing to maintain the suit at bar. The defendants insist that it follows that this court is without jurisdiction to determine whether the statute or the exercises conducted under it are constitutional. They contend also that the statute does not establish a religion and that it does not interfere with the free exercise of religion.

The word used by Mr. Schempp was "anti-Red". We assume that he meant to use the word "pro-Red."

and vigorously assert that the doctrine of abstention requires this court to stay its hand.

As to the preliminary questions of law we think we need not say much more than that which is set out under heading "III" of our first opinion, 177 F. Supp. 402-403, except in two respects. The statute now *sub judice* provides, as has been said, that a child may be excused from attendance at the Bible reading on the written request of his parent or guardian. But since, as will appear hereinafter, we decide this controversy on the "Establishment of Religion" clause of the First Amendment the exculpatory phrase cannot aid the defendants' argument that the doctrine of abstention is applicable for, as we will show, there is religious establishment in this case whether pupils are or are not excused from attendance at the morning exercises. It is also true, as the defendants point out, that Section 1516 as amended by the Act of 1959, has not been long in existence, but this cannot be considered to be a decisive factor. There is no suggestion or even hint that the important issues presented by this case will be litigated in the Pennsylvania Courts. We have no doubt that substantial federal questions are presented for adjudication by the present litigation. We therefore must proceed to decide this controversy on the merits.

The attendance by the minor plaintiffs, Roger and Donna Schempp, at the Abington Senior High School is compulsory. See 24 P.S. § 13-1327 (Supp. 1960). The reading of ten verses of the Holy Bible³ under the present statute also is compelled by law. The reading of the verses, even without comment, possesses a devotional and religious character and constitutes in effect a religious observance. The devotional and religious nature of the morning exercises is made all the more apparent by the fact that the Bible reading is followed immediately by a recital in unison by the pupils of the Lord's Prayer. The fact that some pupils, or theoretically all pupils, might be excused from attendance at the exercises does not mitigate the obligatory nature of the ceremony for the "new" Section 1516, as did the statute prior to its 1959 amendment, unequivocally requires the

³ The Bible employed was the King James Version. See note 10 cited to the text of our first opinion, 177 F. Supp. at p. 400.

exercises to be held every school day in every school in the Commonwealth. The exercises are held in the school building [fol. 596] and performed are conducted by and under the authority of the local school authorities and during school sessions. Since the statute requires the reading of the "Holy Bible", a Christian document, the practice, as we said in our first opinion, prefers the Christian religion. The record demonstrates that it was the intention of the General Assembly of the Commonwealth of Pennsylvania to introduce a religious ceremony into the public schools of the Commonwealth.

The case at bar is governed by *McCullum v. Board of Education*, 333 U.S. 203 (1948). Its essential facts and those of *McCullum* are quite similar. They need not be compared here. As was said by Mr. Justice Black in *McCullum*, at p. 212: "[T]he First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere. . . . [T]he First Amendment has erected a wall between Church and State which must be kept high and impregnable." In *Zorach v. Clauson*, 343 U.S. 306, 315 (1952), Mr. Justice Douglas stated: "We follow the *McCullum* case.", and this was reiterated in *Torcaso v. Watkins*, 367 U.S. 488, 494 (1961). In *Torcaso* Mr. Justice Rutledge's dissenting opinion in *Everson v. Board of Education* 330 U.S. 1, 59 (1947), was quoted with approval: "[W]e have staked the very existence of our country on the faith that complete separation between the state and religion is best for the state and best for religion. Remonstrance, Pa. 8, 12." The Commonwealth of Pennsylvania has seen fit to breach the wall between church and state.

We hold the statute amended unconstitutional on the ground that it violates the "Establishment of Religion" clause of the First Amendment made applicable to the Commonwealth of Pennsylvania by the Fourteenth Amendment. We find it unnecessary to pass upon any other contention made by the plaintiffs in respect to the unconstitutionality of the statute or of the practices thereunder.

[fol. 597] We reiterate the findings of fact made in our first opinion, handed down on September 16, 1959, as

amended September 22, 1959, except those contained therein which are inconsistent with the findings specifically made in this opinion. In addition to the findings of fact in our prior opinion and in this opinion we make the following additional findings of fact and conclusions of law. Rule 52 F. R. Civ. Proc., 28 U.S.C.

FINDINGS OF FACT

1. Plaintiffs Edward Louis Schempp and Sidney Gerber Schempp are the parents and natural guardians of minor plaintiffs Roger Wade Schempp and Donna Kay Schempp, residing in Montgomery County, Pennsylvania.
2. All of the defendants reside or are located within the jurisdiction of the United States District Court for the Eastern District of Pennsylvania.
3. Minor plaintiffs Roger Schempp and Donna Schempp are presently eleventh grade students in the Abington Senior High School, Abington Township, Montgomery County, Pennsylvania.
4. At the school attended by the minor plaintiffs there is an opening period each day observed by the reading of ten verses of the Bible.
5. The reading of the Bible each day is followed by a standing recitation in unison of that portion of the New Testament known as the Lord's Prayer.
6. The attendance of each student at the ceremony of the Bible reading is compulsory unless the student produces a written excuse from his or her parent or guardian.
7. The practice of the daily reading of ten verses of the Bible in the public schools of Abington Township constitutes religious instruction and the promotion of religiousness.
- [fol. 598] 8. The practice of the daily reading of ten verses of the Bible together with the daily recitation of the Lord's Prayer in the public schools of Abington Township is a religious ceremony.

CONCLUSIONS OF LAW

1. The court has jurisdiction of the parties and the subject matter of this litigation under Sections 1343, 2281, Title 28, United States Code. The instant three-judge court was properly convened pursuant to Section 2284, Title 28, United States Code, and has before it substantial federal questions for adjudication.

2. The practice of reading ten verses of the Bible each day in the public schools of Abington Township is pursuant to the mandatory provisions of Section 1516 of the Pennsylvania Public School Code of March 10, 1949, as amended.

3. Section 1516 of the Pennsylvania Public School Code of March 10, 1949, as amended, violates the First Amendment to the United States Constitution as applied to the states by the Fourteenth Amendment in that it provides for an establishment of religion.

4. The combined practice of Bible reading and mass recitation of the Lord's Prayer by students in the public schools of Abington Township violates the First Amendment to the United States Constitution as applied to the states by the Fourteenth Amendment in that said practice provides for an establishment of religion.

[fol. 599] The motion of the defendants to strike out the plaintiffs' testimony taken at the hearings in this case, prior to the amendment of Section 1516 in 1959, on the ground that the supplemental pleading states a new cause of action will be denied.

The motion of the defendants to dismiss the supplemental pleading on the ground that it fails to state a cause of action will be denied.

John Biggs, Jr., United States Circuit Judge, William H. Kirkpatrick, C. William Kraft, Jr., United States District Judges.

Dated: February 1, 1962.

[fol. 600]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
Civil Action No. 24119

EDWARD L. SCHEMP, et al.

v.

SCHOOL DISTRICT OF ABINGTON TOWNSHIP, et al.

FINAL DECREE—February 1, 1962

The plaintiffs having filed their complaint on February 14, 1958, and having amended their complaint by authority of the court by way of a supplemental pleading filed January 4, 1961, and answers having been duly filed, and a three-judge court having been convened pursuant to Section 2284, Title 28, United States Code, and hearings having been held and testimony taken by the court, and briefs having been filed and argument having been heard, now therefore it is

Ordered, Adjudged and Decreed as follows:

1. The defendants are perpetually enjoined and restrained from reading and causing to be read, or permitting anyone subject to their control and direction to read, to students in the Abington Senior High School, Abington Township, Montgomery County, Pennsylvania, any work or book known as the Holy Bible, as directed by Section 1516 of the Pennsylvania Public School Code of March 10, 1949, P. L. 30, as amended, in conjunction with, or not in conjunction with, the saying, the reciting, or the reading of the Lord's Prayer; provided, that nothing herein shall be construed as interfering with or prohibiting the use of any books or works as educational, source, or reference material;

2. The defendants' motion to strike out the plaintiffs' testimony taken at the hearings in this case prior to the amendment of Section 1516 in 1959 is denied;

[fol. 601] 3. The defendants' motion to dismiss the plaintiffs' supplemental pleading on the ground that it fails to state a cause of action is denied.

John Biggs, Jr., United States Circuit Judge, William H. Kirkpatrick, C. William Kraft, Jr., United States District Judges.

Dated: February 1, 1962.

[fol. 605]

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—Filed March 28, 1962

1. Notice is hereby given that School District of Abington Township, Pennsylvania, James F. Koehler, O. H. English, Eugene Stull, M. Edward Northam and Charles H. Boehm, Superintendent of Public Instruction, Commonwealth of Pennsylvania, the defendants above named, hereby appeal to the Supreme Court of the United States from the Final Decree perpetually enjoining and restraining defendants from reading and causing to be read, or permitting anyone subject to their control and direction to read, to students in the Abington Senior High School, [fol. 606] Abington Township, Montgomery County, Pennsylvania, any work or book known as the Holy Bible, as directed by Section 1516 of the Pennsylvania Public School Code of March 10, 1949, P. L. 30, as amended, in conjunction with, or not in conjunction with, the saying, the reciting, or the reading of the Lord's Prayer, which Final Decree, dated February 1, 1962, was filed in this action on February 1, 1962.

This appeal is taken pursuant to 28 U.S.C. §1253.

H. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

- (1) Complaint filed February 14, 1958.
- (2) Answer of Defendants, filed April 25, 1958.
- (3) Transcript of trial held August 5-6, 1958, November 25, 1958, March 12, 1959, including the following Exhibits offered thereat: P-1, D-3, D-4, D-9, D-10, D-11, and including Exhibit D-1 admitted into evidence by stipulation of counsel, dated December 15, 1958.
- (4) Transcript of deposition of Charles H. Boehm held November 26, 1958, including Exhibit D-9a offered thereat.
- (5) Plaintiffs' Request for Findings of Fact and Conclusions of Law, filed March 26, 1959.
- (6) Defendants' Request for Findings of Fact and Conclusions of Law, filed April 1, 1959.
- [fol. 607] (7) Opinion of the Court dated September 16, 1959.
- (8) Final Decree of the Court dated September 16, 1959, and filed September 17, 1959.
- (9) Defendants' Motion to Stay Final Judgment Pending Appeal, filed September 21, 1959.
- (10) Order of Honorable John Biggs, Jr., staying operation and enforcement of the Final Decree, filed September 21, 1959.
- (11) Order of Honorable John Biggs, Jr., amending Opinion of the Court, filed September 22, 1959.
- (12) Notice of Appeal to the Supreme Court of the United States, dated November 12, 1959.

(13) Defendants' Motion for Relief from Judgment and Final Decree under Rule 60(b), filed December 23, 1959.

(14) Opinion and Order of Honorable John Biggs, Jr., denying Defendants' Motion for Relief from Judgment under Rule 60(b), filed June 9, 1960.

(15) Mandate of the Supreme Court of the United States vacating judgment of the Court with costs and remanding cause for such further proceedings as may be appropriate, filed December 9, 1960.

(16) Plaintiffs' Motion for Leave to File a Supplemental Pleading under Rule 15(d), filed January 4, 1961.

[fol. 608] (17) Motion of Charles H. Boehm, Superintendent of Public Instruction of the Commonwealth of Pennsylvania, to intervene as a defendant, filed January 5, 1961.

(18) Order of Honorable John Biggs, Jr., granting leave to Charles H. Boehm to intervene as a defendant, filed March 7, 1961.

(19) Opinion of the Court and Order granting leave to plaintiffs to file Supplemental Pleading under Rule 15(d) and that same is filed, filed June 22, 1961.

(20) Answer of Defendants, School District of Abington Township, et al., to Plaintiffs' Supplemental Pleading, filed July 10, 1961.

(21) Answer of Defendant Charles H. Boehm to Plaintiffs' Supplemental Pleading, filed July 11, 1961.

(22) Transcript of trial held October 17, 1961.

(23) Defendants' Request for Findings of Fact and Conclusions of Law, filed January 8, 1962.

(24) Opinion of the Court and Final Decree dated February 1, 1962 and filed February 1, 1962.

(25) Defendants' Motion to Stay Final Judgment Pending Appeal, filed February 5, 1962.

(26) Order of the Court staying Final Decree of February 1, 1962, filed February 5, 1962.

(27) Notice of Appeal.

[fol. 609] III. The following questions are presented by this appeal:

(1) Is Section 1516 of the Public School Code of 1949, the Act of March 10, 1949, P. L. 30, as amended by the Act of December 17, 1959, P. L. 1928, a law respecting an establishment of religion or prohibiting the free exercise thereof within the prohibition of the First Amendment to the United States Constitution as applied to the States by the Fourteenth Amendment, by providing for the reading without comment at the opening of each public school on each school day, of at least ten verses from the Holy Bible, subject to the excuse of any child from such Bible reading or attending such Bible reading upon the written request of his parent or guardian?

(2) Have plaintiffs been deprived of any constitutionally protected right when, in the absence of compulsion on them to believe, disbelieve, participate in or attend a Bible reading exercise in violation of their religious consciences, they have not sought to be excused under a statute which provides the right of excuse, and no measurable tax burden upon them resulting from the Bible reading exercise has been shown?

(3) Did the United States District Court abuse its discretion in exercising jurisdiction in this matter for the reason that the Supreme Court of the Commonwealth of Pennsylvania has neither interpreted nor determined, nor has it had the opportunity to interpret or determine the constitutionality of Section 1516 of the Public School Code, *supra*?

C. Brewster Rhoads, 1421 Chestnut Street, Philadelphia 2, Pa.; Percival R. Rieder, 1067 Old York Road, Abington, Pa.; Attorneys for School District of Abington Township, Pennsylvania, James F. Koehler, O. H. English, Eugene Stull and M. Edward Northam.

John D. Killian, III, Deputy Attorney General, David Stahl, Attorney General, Attorneys for Charles H. Boehm, Superintendent of Public Instruction, Commonwealth of Pennsylvania.

[fol. 613] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 614]

SUPREME COURT OF THE UNITED STATES

No. 142—October Term, 1962

SCHOOL DISTRICT OF ABINGTON TOWNSHIP,
PENNSYLVANIA, et al., Appellants,

vs.

EDWARD LEWIS SCHEMP, et al.

ORDER NOTING PROBABLE JURISDICTION—October 8, 1962

Appeal from the United States District Court for the Eastern District of Pennsylvania.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is set for argument immediately following No. 119.

October 8, 1962

Mr. Justice Goldberg took no part in the consideration or decision of this case.